

Appointment

From: Bodine, Susan [bodine.susan@epa.gov]
Sent: 4/22/2019 4:21:59 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Bilbrey, Sheryl [bilbrey.sheryl@epa.gov]; Ingemansen, Dean [Ingemansen.Dean@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Woolford, James [Woolford.James@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Wright, Peter [wright.peter@epa.gov]; lsayer@midasgoldinc.com; mbogert@midasgoldinc.com; JCruden@bdlaw.com
Subject: FW: CONFIRMED: Meeting with Midas Gold Corp. Idaho, Call-in Number: Ex. 6 Personal Privacy (PP) **Code:** Ex. 6 Personal Privacy (PP)
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Message

From: Tenpas, Ron [rtenpas@velaw.com]
Sent: 7/30/2020 2:36:56 AM
To: Bodine, Susan [bodine.susan@epa.gov]; Cook, Steven [cook.steven@epa.gov]
CC: Wright, Peter [wright.peter@epa.gov]; John C. Cruden [JCruden@bdlaw.com]
Subject: Midas Gold
Attachments: Stibnite Mine Site - Proposed Draft ASAOC (3).DOCX; 2020-07-21 Stibnite Mine ASAOC - Appendix A - Draft Statement of Work (4).DOCX; 200727 - Letter to Governor Little - Stibnite.pdf

Susan/Steven,

I wanted to just check in quickly. I think there had been a plan for a tribal consultation to occur yesterday. Do you know if that went forward? Relatedly, do you have any insights on when we might see a proposal building off the draft we sent last week?

It occurred to me also that it may help if HQ has our draft agreement in Word version, not just PDF. I was (b) (6) last week when we formally transmitted to both HQ and the Region and I just noticed that you all were sent only a PDF. Simply in case it helps, I am attaching word versions of the two part document (I believe the Region also has it in word version so this is simply to avoid any doubt that you have it also).

Finally, for your information, Stibnite was just identified as a high priority infrastructure project under the President's Executive Order 13766. Attached is a copy of Mary Neumayr's letter to Governor Little in Idaho confirming that.

Regards,

Ron

Ronald J. Tenpas
Partner

Vinson&Elkins

E rtenpas@velaw.com
W +1.202.639.6791

Vinson & Elkins LLP
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037

[bio](#)

[vcard](#)

[velaw.com](#)

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Thank You.

APPENDIX A

**STATEMENT OF WORK
FOR THE STIBNITE MINE SITE
REMOVAL ACTION**

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1 PURPOSE

This SOW sets forth the requirements for conducting investigation, removal design (RD) and removal action (RA) at the Site (see [REF _Ref45898462 \h]) located in Valley County, Idaho approximately 10 miles from the town of Yellow Pine. This SOW provides an overview of Work that will be carried out by MGII on behalf of Respondents at the Site. As described in this SOW, the Work includes a number of removal actions in multiple phases that are collectively part of the single comprehensive RA for the Site.

In September 2016, MGII filed a PRO with the USFS for the Stibnite Gold Project (SGP), under which Respondents plan to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features and remediation of the impacts of legacy mining activities at the Site. This SOW has been structured to account for the likely timing and nature of activities to be performed under the PRO.

This SOW is attached to and is incorporated into the Administrative Settlement Agreement and Order on Consent (ASAOC) for the Site. Technical Work described in this SOW is intended to provide more information to the Respondents for the purpose of implementing the ASAOC and is not intended to change the meaning of any ASAOC language. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan, commonly called the National Contingency Plan (NCP), 40 CFR Pt. 300. Any discrepancies between the ASAOC and this SOW are unintended, and whenever necessary, the ASAOC will control any interpretive disputes. Unless otherwise stated, all terms in this SOW will have the same definition as in the ASAOC.

2 SCOPE

The specific activities to be conducted at the Site are set forth in eight separate tasks.

- Task 1 – Project Planning and Initial Investigation Activities
- Task 2 – Phase 1 Removal Actions
- Task 3 – Phase 1 Focused Baseline Studies of Adits
- Task 4 – Phase 1 Completion Report
- Task 5 – Design of Bridging Phase Mine Waste Relocation
- Task 6 – Bridging Phase Removal Actions
- Task 7 – Phase 2 Removal Actions
- Task 8 – Phase 3 Removal Actions

3 OVERSIGHT

Oversight of Respondents' Work conducted under the SOW will be carried out by the EPA in a manner to assure the satisfaction of all federal and state requirements. The Respondents shall

support the EPA's initiation and conduct of activities related to the implementation of oversight activities.

EPA will serve as the lead agency for purposes of this ASAOC and SOW and will consult with and share information with the Participating Parties in accordance with the terms of the ASAOC. Respondents shall submit all documents or deliverables required as part of this SOW to EPA, for EPA's review and approval. All work products submitted to EPA are subject to EPA approval including, but not limited to, submissions specified in the Work Plan(s) or ASAOC and additional work products that may be required under Work Plan modifications. Respondents shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the NCP and relevant EPA guidance.

Throughout implementation of the Work, Respondents shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports must document the status of all Work being carried out under this Settlement under development. These reports shall describe the actions and decisions taken, and problems encountered during the previous quarter, and activities scheduled during the upcoming reporting period. Progress reports shall also summarize the extent to which the procedures and dates set forth in the ASAOC are being met.

4 SCHEDULE

The schedule for all deliverables under this SOW is specified in Attachment A.

5 GUIDANCE

Respondents shall conduct the Work, and produce technical reports that are in accordance with the ASAOC and SOW. Respondents shall conduct the RDs consistent with the Remedial Design/Remedial Action Handbook¹ (EPA, Office of Solid Waste and Emergency Response (OSWER), Directive 9355.0-04B, EPA 540/R-95/059, June 1995), and all other guidance used by the EPA in conducting an RD.

6 TASK 1 – PROJECT PLANNING AND INITIAL INVESTIGATION ACTIVITIES

The following activities shall be performed by the Respondents as a function of the project planning process.

6.1 Existing Site Information

The Respondents shall gather, analyze, and present existing Site information and shall conduct a work session to assist in development of the Phase 1 Removal Action Work Plans (RAWPs).

¹ Use of the Remedial Design / Remedial Action Handbook is appropriate for removal actions that are significant construction projects which are similar in nature to remedial actions.

6.1.1 Collect and Provide Relevant Existing Data

Before planning Work activities, all existing Site data relevant to the Work shall be thoroughly compiled and reviewed by Respondents. Historical data shall be submitted electronically according to EPA Region 10 specifications. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. The data must also include results from any previous sampling that may have been conducted to characterize legacy mine waste areas and legacy adit areas. At a minimum, the legacy mine waste areas include: the Spent Ore Disposal Area (SODA) and Bradley Tailings Pile, the Keyway Dam and Marsh area, the former Meadow Creek Mill and Smelter area, the Hecla heap leach pad area, the Canadian Superior heap leach pads area, the Defense Minerals Exploration Administration (DMEA) waste rock dump area, the Bradley man camp waste rock dumps area, the Yellow Pine Pit area (also referred to as the Glory Hole), the northwest Bradley waste rock dumps and Hennessy Creek area, the northeast Bradley oxide dumps area (collectively, the “Legacy Mine Waste Areas”). At a minimum, the legacy mine adit areas include: the Meadow Creek Mine adit area, the DMEA adit area, the Cinnabar Tunnel adit area, the Bailey Tunnel outlet area, and the Bonanza adit area; this list comprises the (collectively, “Legacy Adit Areas”). Only data that is determined by EPA to be of appropriate type and quality to support specific intended uses shall be utilized in the project.

6.1.2 Conduct Site Visit

Respondents and EPA shall conduct a Site visit during the project planning phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential transport pathways. While at the Site, Respondents and EPA will, at a minimum, visit the Legacy Mine Waste Areas and Legacy Adit Areas listed in Section [REF _Ref46122702 \r \h].

6.2 Site Health and Safety Plan

A Health and Safety Plan (HASP) shall be prepared in conformance with Respondents’ health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that EPA does not “approve” Respondents’ health and safety plan, but rather EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

6.3 Initial Investigation Activities

The Site has been the subject of extensive previous investigations including a broad spectrum of inorganic and organic chemical analyses of water quality and geologic and anthropogenic materials including variable levels of characterization at the RA areas.

Respondents’ want to begin initial investigation activities at the Site as soon as possible; they plan to perform a ground and surface water monitoring event in the fall of 2020 at the locations shown on [REF _Ref45965733 \h * MERGEFORMAT]. These ground and surface water sampling locations were established in consultation with the USFS and cooperating NEPA agencies to characterize the baseline conditions at the SGP, which include the Legacy Mine Waste and Adit Areas listed in Section [REF _Ref46122702 \r \h].

Samples will be collected and analyzed per the requirements of the Stibnite Gold Project Quality Assurance Project Plan and Surface Water Quality Sampling Plan (HDR, 2012) and Groundwater Quality Supplemental Baseline Study Work Plan (Stantec, 2012). These sampling and analyses documents have been reviewed and approved by the USFS and cooperating NEPA agencies.

7 TASK 2 – PHASE 1 REMOVAL ACTIONS

7.1 Description and Scope of Removal Actions

7.1.1 Bradley Dumps and Hennessy Creek Area Removal Action

The Northwest Bradley Dumps consist of extensive legacy waste rock dumps covering over 30 acres situated along the East Fork of the South Fork of the Salmon River (EFSFSR) southwest of the confluence with Sugar Creek. Hennessy Creek currently leaks from a ditch system and infiltrates upgradient of the Yellow Pine Pit and the Northwest Bradley Dumps. Respondents' existing technical analyses indicate that this water likely infiltrates through the legacy mining waste rock and potentially contributes to the metals concentrations observed at the water quality monitoring station YP-SR-4 in the EFSFSR. The Hennessy Creek RA will entail lining and rerouting the existing Hennessy Creek diversion to a more direct route into the EFSFSR. This would eliminate the majority of the water that presently leaks from the existing ditch system. The infiltrating water is estimated to be sourced in a 0.72 square miles catchment area above the RA site.

Without the perennial inflow from Hennessy Creek, wet- and dry-season metals loading to the EFSFSR associated with metal-bearing materials within the Northwest Bradley Dumps would likely decrease. Rerouting the main Hennessy Creek diversion ([REF _Ref45965755 \h] and [REF _Ref45965759 \h]) would be accomplished with a pipeline leading from the present water collection pond along the Stibnite Road, into the Yellow Pine Pit to discharge into the existing pit lake (into deep water to avoid causing turbidity).

After the main Hennessy Creek diversion rerouting is accomplished, the existing ditch near the USFS Smelter Debris Repository would be rerouted west of the Stibnite Road in a pipe, to discharge to another existing, unlined diversion ditch underlain by clean fill and native material beyond the point at which re-infiltrated water could interact with the Northwest Bradley Dumps.

The diversion of Hennessy Creek is expected to impact the shallow groundwater hydrology on the west side of the Yellow Pine Pit, reducing and possibly eliminating existing seeps in the pit walls. Upon completion of the Hennessy Creek diversion, Respondents will undertake seep monitoring along the west side of the Yellow Pine Pit and stream sampling to determine the impact of the Hennessy Creek diversion and whether additional Removal Actions are necessary in Phase 1 or the Optional Bridge Phase.

7.1.2 DMEA Waste Rock Dump Area Removal Action

The DMEA Waste Rock Dump Area consists of waste rock dumps and access roads associated with an underground exploration crosscut, collapsed portal, and drift located on the western side of the EFSFSR valley approximately 0.75 miles south of Fiddle Creek. Existing monitoring data

indicates that there are elevated metals concentrations from the water coming from the DMEA Adit seep (measured at YP-AS-6 and addressed in Section [REF _Ref46155090 \r \h]) and the DMEA Waste Rock seep (measured at YP-T-17). The RA will consist of separation of upgradient water (0.11 square miles catchment area) that currently infiltrates into the waste rock dump by installation of a culvert adjacent to the perimeter of the waste rock dump area ([REF _Ref45965796 \h]). The culvert intake would include a trash rack to prevent the pipe plugging with debris. The upstream end of the pipe would be installed at a sufficient depth to prevent backwater from entering the dump materials. The remainder of the pipe would be laid within or along the present surface channel, with ballast as needed to fix the pipe in place. The outlet would feature riprap erosion protection. As an alternative to or in conjunction with water diversion, and with EPA concurrence, a portion of the DMEA waste rock dump could be moved in partial fulfillment of the 300,000-ton mine waste relocation described in Section [REF _Ref45965998 \r \h].

Diversion of the creek around the DMEA waste rock dump, or alternatively removal of material from the dump toe to prevent the creek from flowing through the dump, would reduce or eliminate the DMEA waste rock dump seep. Respondents will undertake seep monitoring below the road and stream sampling up and down gradient after the RA to determine the effectiveness of the RA and whether additional actions are necessary.

7.1.3 Former Bradley Mill and Smelter Area Removal Action

The Former Bradley Mill and Smelter Area is the site of former legacy mineral processing activities in Meadow Creek valley approximately 0.75 miles southwest of the EFSFSR confluence. The area is southwest of the Hecla heap leach pad, and northwest of the SODA and Bradley Tailings Pile.

In the early 2000s Hecla Mining Company closed and reclaimed their heap leach pad, which included construction of a spring, stream and storm water capture and run on ditch. The ditch originated near the southwest corner of the leach pad and directed the flow to the southwest to a stormwater retention pond near the northwest corner of the Keyway wetland, which is immediately adjacent to Keyway seep YP-S-8. The ditch captured surface water from two small, but perennial streams above the mill area, and seeps at the base of the slope, preventing this water from reporting to the former mill and smelter area. This diversion successfully minimized the flows in seeps at the site of YP-T-23A and provided a source of water to the Keyway wetland that likely reduced metal concentrations and supported improved wetland functions. In addition, the diversion reduced flows of water through contaminated materials, that likely reduced metal loads near YP-T-23A to YP-S-5, and potentially to Meadow Creek and groundwater. The ditch was backfilled in 2009-2010 in a previous Time Critical Removal Action associated with the Smelter Stack Removal.

This RA will entail installation of a geosynthetic lined ditch and pipe to divert upgradient water around mineralized backfill materials west of the heap leach pad ([REF _Ref45965846 \h]) in order to restore a prior storm water capture and run on ditch to discharge captured stormwater adjacent to the Keyway Seep (YP-S-8). A ditch at the upstream end of the new diversion would allow collection of the principal catchments (0.16 square miles catchment area) draining to this area. The lower portion of the diversion would utilize a pipeline for more effective containment, faster construction, and avoidance of excavating potentially contaminated materials in the vicinity

of the old smelter stack. Together, the ditch and pipe system would re-establish the effective diversion system and thereby reduce the amount of water from the offsite catchments infiltrating into and interacting with legacy mine waste and then potentially transporting metals to Meadow Creek. The pipe outfall would report to an existing ditch that leads to a culvert, which then drains to the Keyway Marsh – with a potential ancillary benefit of providing additional water to support wetland function and potentially reducing overall concentrations in the area near Keyway Seep YP-S-8 and flows and potential metal loading into the existing culvert system at YP-T-23A and down gradient at YP-S-5 and YP-T-24. Monitoring of the seeps and stream channel below and up and down gradient of the area after the RA will be included in the effectiveness monitoring program.

7.1.4 Phase 1 Mine Waste Relocation

Approximately 300,000 tons of mine waste will be relocated from the present waste rock dumps that interact with water to an on-Site location to reduce the interaction of water with dump materials with the goal of reducing metal loading to the EFSFSR. The removal and relocation details and locations will be developed during RD. Candidate areas for material removal include the Legacy Mine Waste Areas listed in Section [REF_Ref46122702 \r \h * MERGEFORMAT]. At EPA's discretion, MGII may propose other actions (such as water diversion that may be more effective in improving water quality) and reduce the quantity of mine waste removed, such that the overall cost of the action remains the same.

7.2 Phase 1 Mine Waste Relocation Scoping Report

Respondents will submit a Draft Phase 1 Mine Waste Relocation Scoping Report. The report will provide:

1. Site data and rationale to select the mine waste to be removed from the Legacy Mine Waste Areas (including specific removal locations and associated material volumes) or otherwise reduced in its ability to interact with water.
2. The proposed relocation site(s).
3. Controls for the relocated material to prevent migration of contaminants to the EFSFSR.
4. An evaluation of potential interim controls for materials that are not selected for relocation during Phase 1, consistent with Section [REF_Ref45965998 \r \h].

7.3 Phase 1 Removal Action Design

7.3.1 Draft Removal Action Design Reports/Removal Action Work Plans

Respondents will submit Draft Removal Design Reports (RDRs)/Removal Action Work Plans (RAWPs) for each of the RAs in Section [REF_Ref45967497 \r \h]; multiple reports may be appropriate for a given RA depending on the schedule and scope of the RA. The reports will contain, at a minimum, the following:

1. A statement of the problem(s) and potential problem(s) posed by the RA Project Area.

2. A background summary setting forth: (a) a brief description of the RA Project Area including the geographic location and a description of the physiographic, hydrologic, geologic, demographic, ecological, cultural, and natural resource features; (b) a brief synopsis of the history of the RA Project Area including a summary of past disposal practices and a description of previous responses that have been conducted by local, State, Federal, or private parties; and (c) a summary of the existing data including physical and chemical characteristics of the contaminants identified and their distribution among the environmental media at the Project Area
3. A cultural resource survey for the areal extent of the RA Project Area that shall include: A cultural resource review of records on file at the Idaho State Historic Preservation Office (SHPO) to determine potential locations of prior cultural resources inventories and previously recorded cultural resource sites in the RA Project Area vicinity; and an on-the-ground identification of potential cultural resources within the RA Project Area. Respondents shall coordinate the cultural resource survey with the Agencies.
4. A Bird Nest Survey, Mitigation, and Monitoring Plan for the areal extent of the RA Project Area, if needed, based on the following:

To avoid impacts to migratory birds and their nesting, ground clearing of vegetation should be completed before or after the nesting period for the site (approximately May 15th through August 15th). The EPA may grant exceptions to this if erosion, sedimentation, weed infestation, important timing conflicts, or other unacceptable impacts would occur. If an exception is granted a, Bird Nest Survey, Mitigation, and Monitoring Plan would be required and additional mitigation measures would apply in the event active nests are present.
5. The technical parameters upon which the design will be based. Specifically, the design assumptions and parameters, including (1) waste characterization for hazardous waste that leaves the Site; (2) performance standards; (3) compliance with Applicable or Relevant and Appropriate Requirements (ARARs), pertinent codes, and standards; (4) technical factors of importance to the design and construction, including use of currently accepted environmental control measures, constructability of the design, and use of currently acceptable construction practices and techniques.

In addition, the Draft RDRs will include:

1. Preliminary Construction Schedule appropriate to the size and complexity of the project.
2. Plans, Drawings, and Specifications. A complete set of construction drawings, including RA Project Area representations, engineering drawings for grading, structural, and cover construction, including a detailed topographic map of the RA Project Area and specifications (general specifications, drawings, and schematics), shall be submitted. Plans and specifications shall conform to acceptable standards. All specifications shall conform to CSI format. Plans and specifications shall include specifications for construction, installation, RA Project Area preparation, and field work standards. General correlation between drawings and technical specifications is a basic requirement of any set of working construction plans and specifications. The design plans and specifications must be consistent with the technical requirements of all ARARs identified for this project. Before submitting the project specifications, Respondents shall coordinate and cross-check the

specifications and drawings and complete the proofing of the specifications and the cross-checking of all drawings and specifications. The submittals shall include a complete set of construction drawings and specifications, as well as a set of one-half size reduction of drawings.

3. Basis of Design Section including a detailed description of the evaluations conducted to propose the design approach. This section shall include a Summary and Detailed Justification of Assumptions. This summary shall include (1) calculations supporting the assumptions; (2) a detailed evaluation of how all ARARs identified for the RA will be met; (3) a plan for minimizing environmental and public health impacts; and (4) a plan for satisfying permitting requirements.
4. Health and Safety Plan (HASP). Prepare a Site-specific HASP that specifies employee training, protective equipment, medical surveillance requirements, standard operating procedures, and a contingency plan in accordance with 40 CFR 300.150 of the NCP and 29 CFR 1910.120 (l)(1) and (l)(2) and consistent with Respondents' existing HASP.
5. Quality Assurance Project Plan (QAPP). The QAPP will specify all sampling and chemical analyses to be performed and shall meet the requirements of EPA's National Functional Guidelines for Inorganic Data Review, (EPA 540-R-10-011, OSWER 9240.1-51, January 2010) and shall be consistent with the requirements of EPA's Contract Laboratory Program (CLP) for laboratories proposed outside of the CLP. The QAPP shall contain third party data validation procedures to ensure data is of known quality.
6. Sampling and Analyses Plan (SAP). Prepare a SAP that defines the sampling and data collection methods that shall be used for the project. The SAP shall include sampling objectives; sample locations and frequency; sampling equipment and procedures; disposal of investigatory derived waste; sample shipment; sample handling and analyses; and a breakdown of samples to be analyzed through a CLP-equivalent laboratory, as well as the justification for those decisions. The SAP shall consider the use of all existing data and shall justify the need for additional data whenever existing data will meet the same objective. The SAP shall be written so that a field sampling team unfamiliar with the Site would be able to gather the samples and field information required.
7. Storm Water Pollution Prevention Plan (SWPPP). The RAWP will include a description of the applicable BMPs that will be implemented to maintain surface water quality during the RA construction or incorporate by reference a previously approved site-specific SWPPP containing such content.
8. Construction Quality Assurance Plan. Respondents shall submit as part of the RAWP a Construction Quality Assurance (CQA) Plan. The CQA Plan shall include, but not be limited to, the inspection of the installation of any pipe, turf reinforcement mat, silt fence and other erosion-control devices, seed and mulch, precast concrete structures, grout, geotextiles, and other miscellaneous materials, required geotechnical testing of earthwork and various materials, and construction reporting and communications. The CQA Plan shall include but not be limited to construction inspection, verification sampling and testing of earthwork and various materials, review of material submittals, and reporting and communications pertaining to the CQA process. At a minimum, the CQA Plan shall provide requirements for the following elements:

- a. Responsibility and authority of Respondents and all contractors involved in the RA construction.
 - b. CQA Personnel Qualifications. Respondents shall establish the minimum qualifications of the CQA Officer and supporting inspection personnel.
 - c. Inspection Activities. Respondents shall establish the observations and tests that will be required to monitor the construction and/or installation of the components of the RA. The plan shall include the scope and frequency of each type of inspection to be conducted. Inspections shall be required to verify compliance with environmental requirements. Inspections shall also ensure compliance with all health and safety procedures.
 - d. Sampling requirements. Respondents shall establish proposed requirements for sampling activities, sample size, sample locations, frequency of testing, criteria for acceptance and rejection, and plans for correcting problems as addressed in the project specifications.
 - e. Documentation. Respondents shall describe the reporting requirements for CQA activities. This shall include such items as daily summary reports and inspection data sheets.
9. Preliminary Cost Estimate of the costs of all the elements of the RA.

The RAWP shall include a detailed description of the technical approach for the construction activities. The necessary procedures, inspections, deliverables, and schedules shall be specified. A comprehensive construction management schedule for completion of each major activity and deliverable shall also be included. It is intended to serve as a field reference for both Respondents and Agencies' personnel as the RA is implemented. The RAWP will include:

1. Respondents' technical approach to each task to be performed, including a detailed description of each task; the assumptions used; the information needed for each task; any information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the Agencies.
2. Construction schedule.
3. An organizational structure which outlines the responsibilities and authority of all organizations and key personnel involved in the RA. A description of Respondents' key project personnel's qualifications (Project Coordinator, Resident Engineer, quality assurance official, etc.) shall also be provided. The organizational structure shall include the Respondent, the Agencies, and their respective contractors.
4. Statement of qualifications for Respondents' subcontractors. Respondents will provide written acknowledgement that any subcontractors working on the RA have received and read a copy of the ASAO and this SOW at least 15 days prior to onset of work.
5. Best Management Practices (BMPs) shall be implemented during construction to minimize erosion, sedimentation, and dust generation. The BMPs shall include, but not be limited to silt fences, straw bales, fuel storage/handling and/or waste staging/storage areas, temporary sedimentation ponds, and watering to control dust generation, as needed.
6. Process for requesting and obtaining approval for any modifications to the final design prior to initiation of such modifications.

7. Process for documenting approved modifications to the final design.
8. Waste Management Procedures that outline the process, procedures, and safeguards that will be used to ensure hazardous substances, pollutants, or contaminants are not released on- or off-Site during the implementation of the RA. Any plans and procedures prepared during the design should be referenced or adapted whenever possible (i.e. sediment and erosion control plan).
9. Procedure for addressing any unexpected archaeological and/or paleontological discoveries encountered during construction.
10. Inspection Activities. Respondents shall establish the observations and tests that will be required to monitor the construction and/or installation of the components of the RA. The plan shall include the scope and frequency of each type of inspection to be conducted. Inspections shall be required to verify compliance with environmental requirements and include, but not be limited to, air quality and emissions monitoring records, and waste disposal records. Inspections shall also ensure compliance with all health and safety procedures and BMPs.
11. Identification of post-construction Operations, Maintenance and Monitoring requirements.
12. Schedule and content of weekly progress reports.

7.3.2 Final Removal Action Design Report/Removal Action Work Plan

Respondents shall submit a proposed Final RDR/RAWP after receipt of the Agencies' comments on the draft report. If the Agencies require revisions to the proposed Final RDR/RAWP, Respondents shall resubmit a proposed Final RDR/RAWP after receipt of the Agencies' comments. EPA will notify Respondents of the approval of the RDR/RAWP and authorization to implement the RA.

7.4 Removal Action Implementation

Respondents shall implement the RAs in accordance with the specifications, plans, and schedule set forth in the approved RDR/RAWP. Respondents shall notify the Agencies no less than 5 Working Days prior to initiating construction activities. Other notifications may be requested by the EPA project manager (i.e. stop work, etc.).

7.5 Phase 1 of Removal Action Completion Report and Close Out

The purpose of the project completion and close-out activities is for Respondents to conduct the necessary inspections to verify completed Work and prepare a Phase 1 Final Removal Action Report after the completion of each. Project completion and close-out will consist of the following activities:

1. Removal of Temporary facilities. Respondents shall dismantle, pack up, and remove temporary facilities (i.e. trailers) or equipment installed and used during the course of the RA from public land at the Site, as directed by EPA.
2. RA Project Area Restoration. Respondents shall restore the physical appearance of the RA Project Area according to the approved design (i.e. road restoration, fence removal,

reseeding with approved seed mix, etc.).

3. Pre-Final/Final Construction Inspection. Respondents shall conduct a Pre-final Construction Inspection with Respondents' Project Coordinator, Design Engineer, the contractor, Third Party Oversight Engineer, EPA, and Support Agency representatives. This Pre-Final Construction Inspection will be used to develop a punch list of outstanding construction items and deficiencies. Respondents shall prepare and submit a Pre-Final Construction Inspection Report which includes the list of outstanding construction items, deficiencies, completion dates for outstanding items and deficiencies, and the date for the Final Inspection to determine if punch list and all terms of the design have been satisfied. The Final Construction Inspection shall occur within 30 days after completion of outstanding items identified by the Pre-Final Construction Inspection. The Final Construction Inspection Report shall be submitted within 90 days after completion of the Final Construction Inspection.
4. The Draft Interim Completion Report. Within sixty (60) days after completion of each of the five distinct actions in the Phase 1 Work, Respondents shall submit for EPA review and approval an Interim Completion Report summarizing:
 - a. Synopsis of RA construction events.
 - b. Documentation of RA construction activities (maps, as built drawings, cross sections, etc.).
 - c. Performance standards and construction quality control.
 - d. "Difficulties encountered" i.e. a list of items that affect the RA (if any).
 - e. A brief description of how outstanding items and deficiencies were resolved.
 - f. An explanation of any modifications (i.e., Engineering Change Orders [ECOs]) made during the implementation of the RA to the design and why these changes were made.
 - g. Results of the final inspection.
 - h. Anticipated OM&M costs, including basis for costs.
 - i. A "Good Faith" estimate or a statement of actual RA costs.
 - j. A presentation of the analytical results of all sampling and analyses performed, as used to show that the removal action objectives have been met as stated in the RD. All existing Site environmental data, and environmental data collected under the Settlement Agreement will be maintained and updated by Respondents in a comprehensive database. An electronic copy of the database(s) will be provided with the RA Report.
 - k. Accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, photographs, contracts, field logbooks, and permits).
 - l. A listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials.
 - m. In the RA Report, a professional engineer registered in the State of Idaho and Respondents' Project Coordinator shall state that the RA has been constructed in accordance with the approved RDR designs and specifications, RAWP, and any ECOs.

5. When EPA determines, after the Final Inspection and review of the Phase 1 Final Removal Action Completion Report, that the Phase 1 Work for an RA was fully performed in accordance with the ASAOC (with the exception of any continuing obligations under the ASAOC, including implementation of operation, maintenance and monitoring activities), the EPA project manager will provide a Notice of Completion to the Respondents, as provided in the ASAOC.

7.6 Operation, Maintenance and Monitoring Plan

The Respondents shall prepare an Operation, Maintenance and Monitoring (OM&M) Plan that includes the following:

1. A description of normal and long-term operation and maintenance, including tasks for operation, tasks for maintenance, operation conditions, and schedule for each OM&M task.
2. A description of potential operating problems, including common and/or anticipated remedies, and useful-life analyses of significant components and replacement costs.
3. Estimated annual OM&M costs.
4. Safety Plan for OM&M, including a description of precautions and necessary equipment for Site personnel, safety tasks required in event of systems failure, and safety tasks necessary to address protection of nearby residents.
5. Records and reporting mechanisms required, including operating logs, laboratory records, records for OM&M costs, mechanism for reporting emergencies, maintenance records, and reports to the Agencies.
6. Criteria to evaluate the ongoing effectiveness and integrity of the RA. Respondents shall identify any potential failures based upon effectiveness/integrity criteria and develop Corrective Action Plans if necessary.
7. Procedures for modifying the OM&M Plan, including notification and distribution requirements for revisions to the OM&M Plan.
8. An Effectiveness Monitoring Plan (EMP), including
 - a. A SAP.
 - b. A QAPP. Consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001, Reissued May 2006) and "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002). Specifies reporting requirements and the validation/review process for "CLP-like" and "Standard" data reports to ensure data are of known quality, and the frequency for each data-reporting format. Reporting and validation of "CLP-like" reports meet EPA's National Functional Guidelines for Inorganic Data Review, EPA 540-R-10-011, OSWER 9240.1-51, January 2010 in a manner consistent with the requirements of EPA's CLP for laboratories proposed outside of the CLP.
 - c. Data Quality Objectives (DQOs). The DQOs shall, at a minimum, reflect use of analytical methods for identifying contamination and addressing contamination consistent with the removal action objectives identified in the RD.

- d. Duration of the monitoring program.
- e. Monitoring locations.
- f. Monitoring frequencies.
- g. Performance measurement methods as relevant to the EMP.
- h. Analyte list(s).
- i. Implementation schedule.
- j. Reporting requirements, which include reporting specific to this Statement of Work.
- k. Process for submitting and documenting modifications to the EMP prior to initiation of said modifications.

The OM&M Plan will be updated as new RAs are completed at the Site.

7.7 Annual Performance and Effectiveness Monitoring Report

An annual Performance and Effectiveness Monitoring Report (PEMR) for the RA shall be prepared each year by Respondents after approval of the OM&M Plan. The report shall contain the following:

1. A summary of all of the operation, and maintenance activities, inspections, notifications, and corrective actions required under the OM&M Plan.
2. Description of schedule and location of maintenance activities performed.
3. Description of any operational or maintenance problems encountered, and remedies applied.
4. Current year's OM&M costs and cumulative OM&M costs to date.
5. Documentation of any procedures used to prevent releases or threatened releases of hazardous substances which may endanger human health and/or the environment or cause an exceedance of any cleanup standard.
6. Copies of Site inspection documentation and corresponding maintenance records.
7. All monitoring conducted, with tables and figures providing the details of the monitoring information.
8. A discussion of any deviations from the approved OM&M Plan and the impact on Site conditions or data (if any).
9. Summary of requests for modification, with justification as provided for in the approved OM&M Plan (i.e. reduction in sampling locations, frequency, etc.) – note that formal requests for modification of the OM&M Plan will be submitted for approval, and approved by the agencies, outside of the PEMR.

8 TASK 3 – PHASE 1 FOCUSED BASELINE STUDIES OF ADITS

Under this task, baseline studies will be performed at the five Legacy Adit Areas listed in Section [REF _Ref46122702 \r \h] (see [REF _Ref45898462 \h]). The work will generally include the following: (1) data gathering; (2) evaluation of RA alternatives; (3) selection of an alternative for

each adit by EPA; and (4) design of the RA implementation, including schedule. Implementation of the RAs will not be performed in Phase 1 but would be performed in Phase 2.

8.1 Adit Investigation Work Plan

Respondents shall prepare an Adit Investigation Work Plan (AIWP), including an SAP consisting of a Field Sampling Plan (FSP), QAPP, and a HASP. The goal of investigation is to provide sufficient data to support the evaluation and selection of an RA. These plans must be reviewed and approved by EPA prior to the initiation of field activities.

The AIWP shall present the pertinent data gathered during the project planning phase and provide a preliminary Conceptual Site Model (CSM) for each adit. The CSM should include known and suspected sources of contamination, types of contamination and affected media/resources and known and potential routes of migration and an estimate of natural background conditions at each site to assist in evaluation of the CSM. This effort will support an analysis of data gaps and assist in identification of locations where sampling is necessary. The CSM must be updated as new information becomes available.

The AIWP shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the AIWP shall include the rationale for performing the required activities. Specifically, the AIWP must present a statement of the problem(s) and potential problem(s) posed by each adit and the objectives of the project.

Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted.

The SAP will document procedures to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a FSP and a QAPP. The SAP, FSP, and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for removal action objectives identified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), pages 51425-26 and 51433 (December 21, 1988). The QAPP shall be prepared in accordance with requirements in EPA QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision) and specifically should contain the twenty-four elements specified in Table 11 – List of QA Project Plan Elements, EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Investigations, and EPA QA/G-4 Guidance for the

Data Quality Objective Process. All sampling and analyses performed pursuant to this SOW shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be trained and conduct work in accordance with EPA and OSHA requirements and guidance. Respondents shall demonstrate, in advance and to the satisfaction of EPA, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the CLP is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP, a laboratory QA program must be submitted for EPA's review and approval. EPA may require that Respondents submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment, and material specifications. Respondents shall provide assurances that EPA has access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

8.2 Field Investigation

Respondents shall initiate field support activities following approval of the AIWP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. Respondents shall notify the EPA project manager at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. Respondents shall also notify the EPA project manager upon completion of field support activities.

8.3 Characterization and Removal Action Alternatives Analysis Report

Respondents shall submit a Characterization and Removal Action Alternatives Analysis Report. The purpose of this report is to identify and evaluate RA alternatives for an individual RA Candidate Area. The report will provide a summary and analysis of all analytical data collected during the work to support the evaluation of removal action alternatives at each adit. The content of the report will be consistent with the applicable portions of EPA guidance on Conducting Non-Time-Critical Removal Actions under CERCLA. The suggested report format is shown in Attachment B. Based on the report findings EPA will select an RA for each adit if warranted.

8.4 Design

Once EPA has selected an RA for each adit, Respondents will prepare a design for each action. This will follow the approach and requirements set out in Section [REF _Ref45967541 \r \h].

9 TASK 4 – PHASE 1 COMPLETION REPORT

Respondents will submit a Phase 1 Completion Report. The report will include:

1. A summary of all Work completed in Phase 1.
2. References to all approved reports.

If EPA determines that the Phase 1 work was fully performed in accordance with the ASAOC, EPA will provide a Notice of Completion of Phase 1 to the Respondents, as provided in the ASAOC.

10 TASK 5 – DESIGN OF BRIDGING PHASE MINE WASTE RELOCATION

Approximately 200,000 tons of mine waste would be relocated to an on-Site location to reduce the source of metals to the EFSFSR or tributaries of the EFSFSR. The removal and relocation details and locations will be developed during RD.

10.1 Bridging Phase Mine Waste Relocation Scoping Report

Respondents will submit a Draft Bridging Phase Mine Waste Relocation Scoping Report. The report will provide:

1. Site data and rationale to select the 200,000 tons of mine waste to be removed (including specific removal locations and associated material volumes) or otherwise reduced in its ability to interact with water.
2. The proposed relocation site.
3. Controls for the relocated legacy mine waste material, and for the legacy mine waste areas, to prevent migration of contaminants to the EFSFSR or its tributaries.

10.2 Design

Respondents will prepare a design for the Bridging Phase mine waste relocation. The design will follow the approach and requirements set out in Section [REF _Ref45967568 \r \h]. At EPA's discretion, MGII may propose other actions (such as water diversion that may be more effective in improving water quality) and reduce the quantity of mine waste removed, such that the overall cost of the action remains the same.

11 TASK 6 – BRIDGING PHASE REMOVAL ACTION IMPLEMENTATION

As described in the ASAOC, Respondents may elect to undertake the optional Bridging Phase at the end of Phase 1. Should Respondents elect to enter into the Bridging Phase, Respondents will develop a Bridging Phase RAWP to relocate an additional 200,000 tons of mine waste from the Legacy Mine Waste Areas to an on-Site location to reduce the source of metals to the EFSFSR or tributaries of the EFSFSR within 30 days of the receipt of a Notice of Completion of Phase 1. Implementation and reporting will be consistent with the requirements set out in applicable portions of Sections [REF _Ref45967590 \r \h], [REF _Ref45967594 \r \h], [REF _Ref45967598 \r \h], and [REF _Ref46238796 \r \h].

12 TASK 7 – PHASE 2 REMOVAL ACTIONS

Should Respondents elect to enter into Phase 2, the Phase 2 Work would include:

1. Within thirty days of receipt of a Notice of Completion for Phase 1 or the Optional Bridge Phase, Respondents will develop a Phase 2 RAWP for submission to EPA that would continue to address the Legacy Mine Waste Areas and Legacy Adit Areas listed in Section [REF _Ref46122702 \r \h * MERGEFORMAT] that were not addressed in Phase 1 or Bridging Phase.
2. If Work is continued under CERCLA, then Respondents may modify and add detail, if needed, to the implementation plans and schedule for that source developed in Phase 1. Respondents' proposed modifications are subject to review and approval, disapproval, or modification by the EPA as provided in the ASAOC. EPA will take into consideration the approved mine plan and mine operations when it determines the schedule for work performed under the CERCLA agreement.

Implementation and reporting will be consistent with the requirements set out in applicable portions of Sections [REF _Ref45967590 \r \h], [REF _Ref45967594 \r \h], [REF _Ref45967598 \r \h], and [REF _Ref46238796 \r \h].

13 TASK 8 – PHASE 3 REMOVAL ACTIONS

Should Respondents elect to enter into Phase 3, work would include:

1. Within thirty days of receipt of a Notice of Completion for Phase 2, Respondents will develop a Phase 3 RAWP for submission to EPA that would address any additional legacy source materials that remain under CERCLA from the Legacy Mine Waste Areas and Legacy Adit Areas listed in Section [REF _Ref46122702 \r \h * MERGEFORMAT] that remain after Phase 1 and 2 Work under CERCLA or a PRO modification.

Implementation and reporting will be consistent with the requirements set out in applicable portions of Sections [REF _Ref45967590 \r \h], [REF _Ref45967594 \r \h], [REF _Ref45967598 \r \h], and [REF _Ref46238796 \r \h].

14 REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the scope of Work.

The (revised) National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

“Quality Assurance Project Plan and Surface Water Quality Sampling Plan for the Stibnite Gold Project”, HDR, Inc., May 2012.

“Groundwater Quality Supplemental Baseline Study Work Plan” for the Stibnite Gold Project, Stantec Consulting Services Inc., June 2012.

- "A Compendium of Superfund Field Operations Methods", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.
- "U.S. EPA, NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA - 330/9-78-991-R.
- "Data Quality Objectives for Remedial Response Activities", U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.
- "Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Research and Development, Cincinnati, Ohio, QAMS-004/80, December 29, 1980.
- "QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Studies, and EPA QA/G-4 Guidance for the Data Quality Objective Process"
- "Interim Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.
- "Users Guide to the Lead Agency(ies) Contract Laboratory Program, U.S. EPA, Sample Management Office, August 1982.
- "Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements", U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.
- "CERCLA Compliance with Other Laws Manual", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.
- "Draft Guidance on the Lead Agency(ies) Superfund Decision Documents", U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02.
- "Health and Safety Requirements of Employees Employed in Field Activities", U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.
- OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

FIGURES

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Figure 6: Removal Action Water Diversion Plan for Former Bradley Mill and Smelter Area	25

Figure [SEQ Figure * ARABIC]: Map of the Stibnite Mine Site

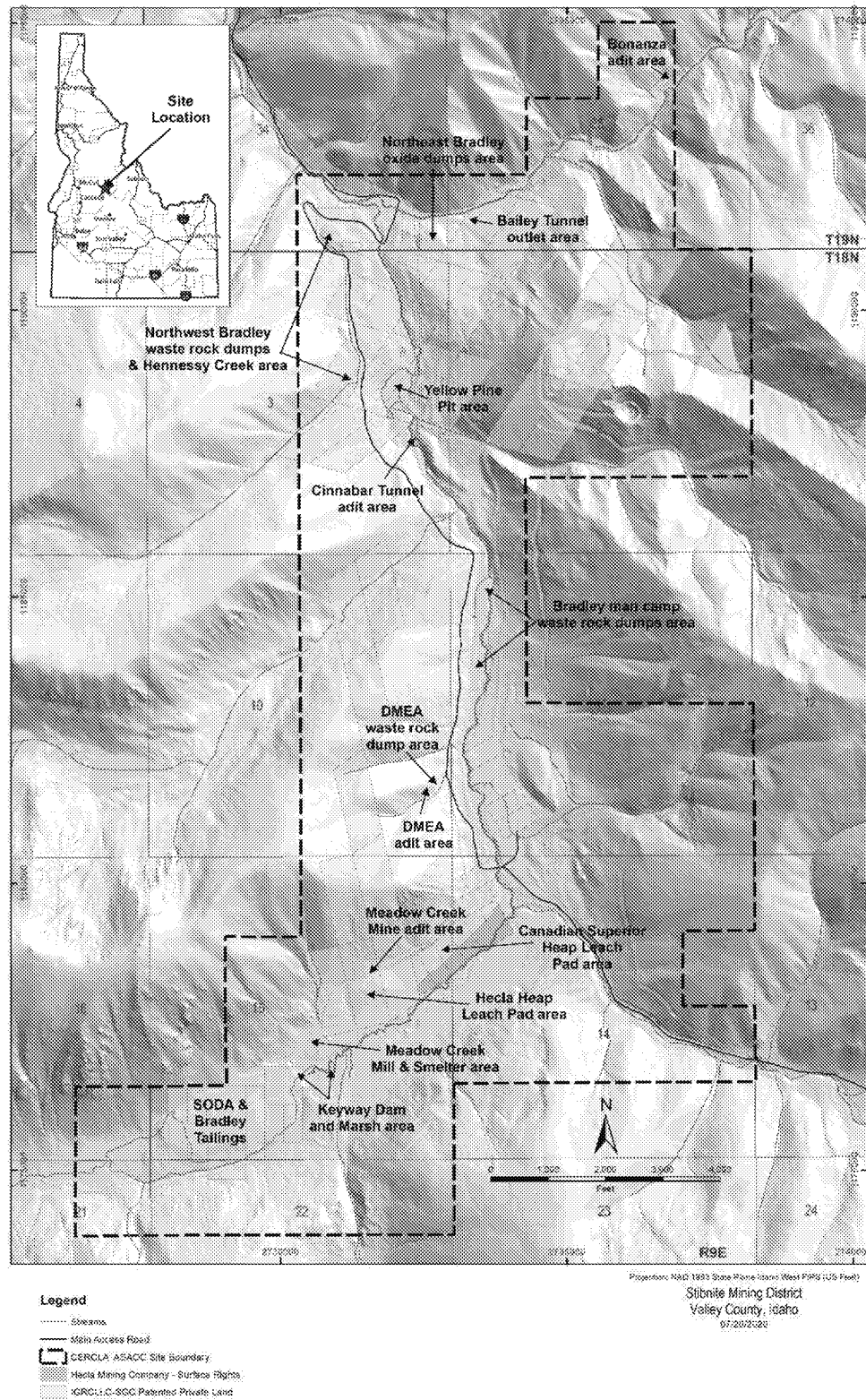


Figure [SEQ Figure * ARABIC]: Ground and Surface Water Sampling Locations – Fall 2020

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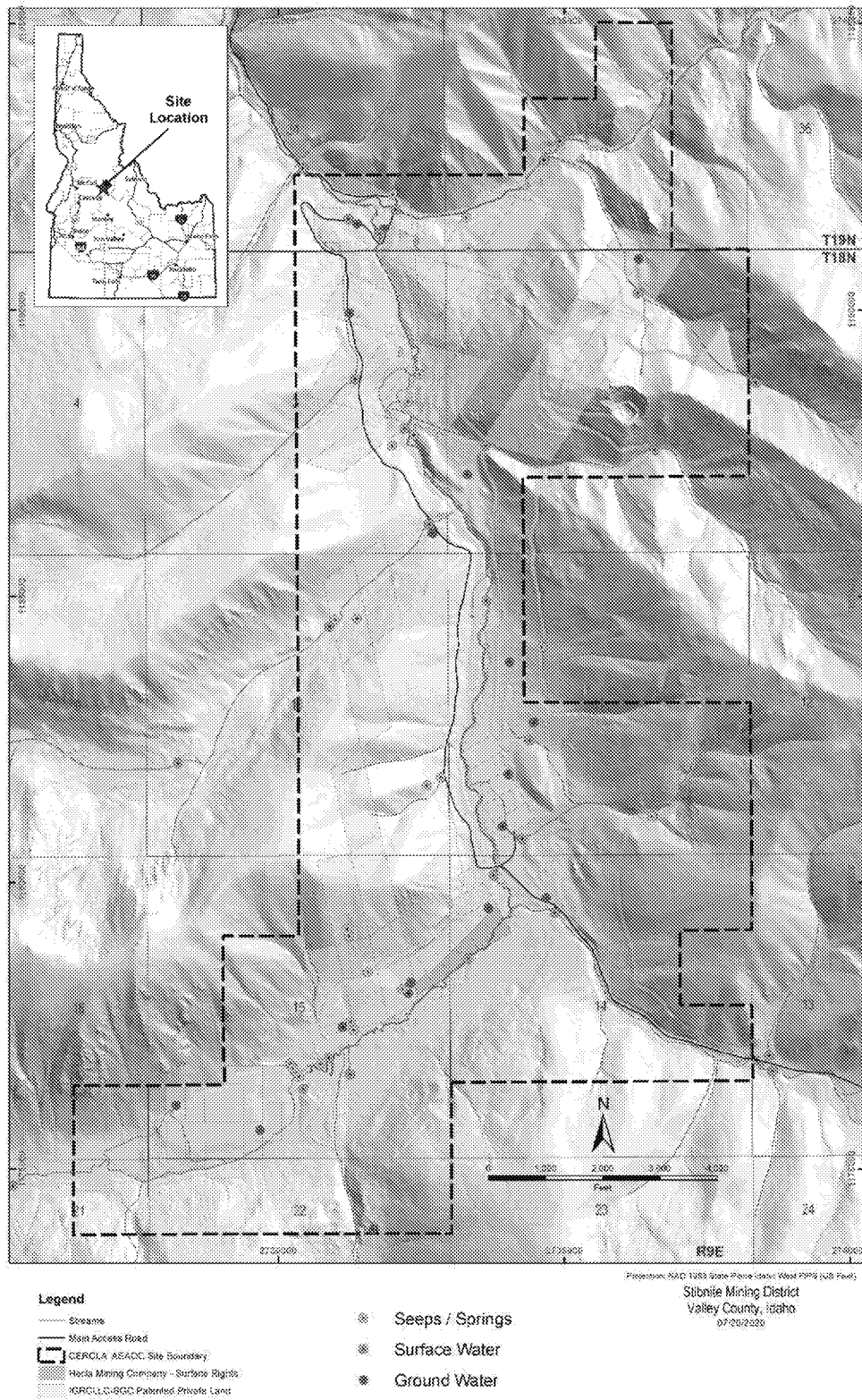


Figure [SEQ Figure * ARABIC]: Removal Action Water Diversion Plan for Hennessy Creek

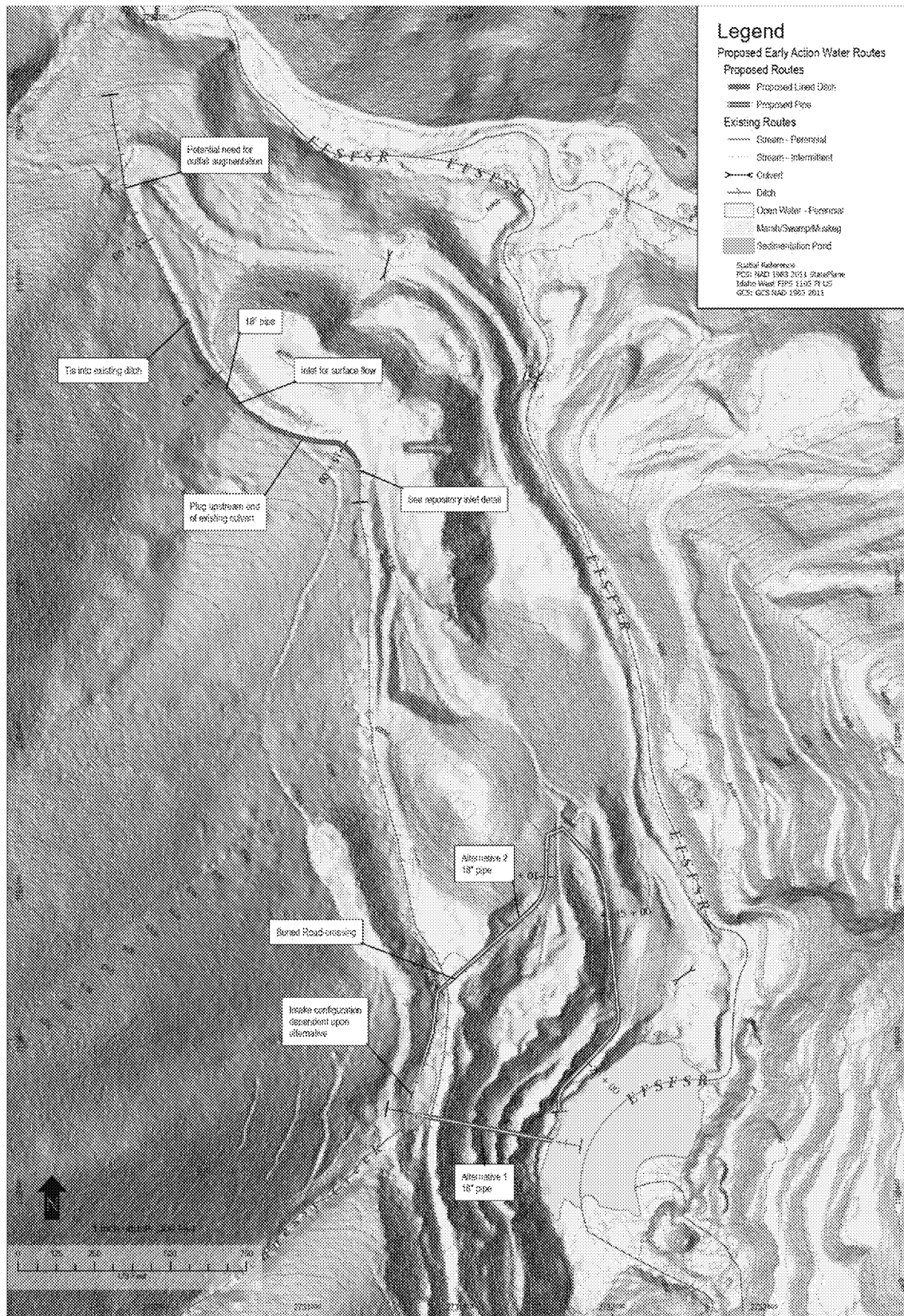


Figure [SEQ Figure * ARABIC]: Removal Action Water Diversion Details for Hennessy Creek

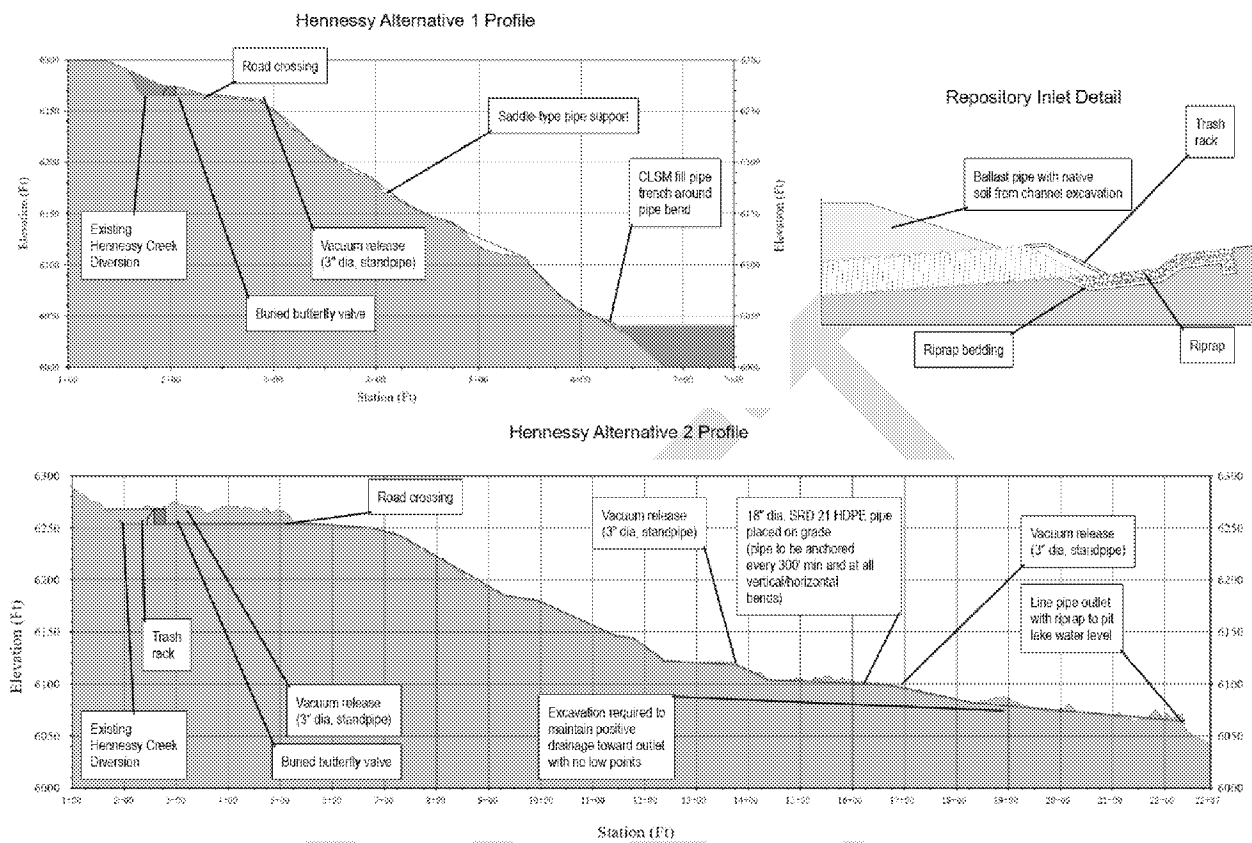


Figure [SEQ Figure * ARABIC]: Removal Action Water Diversion Design for DMEA Waste Rock Dump Area

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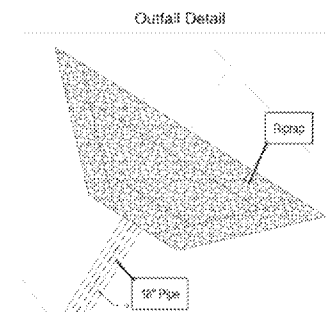
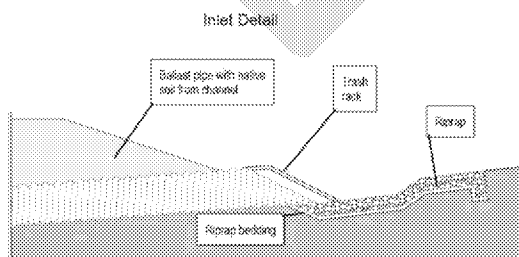
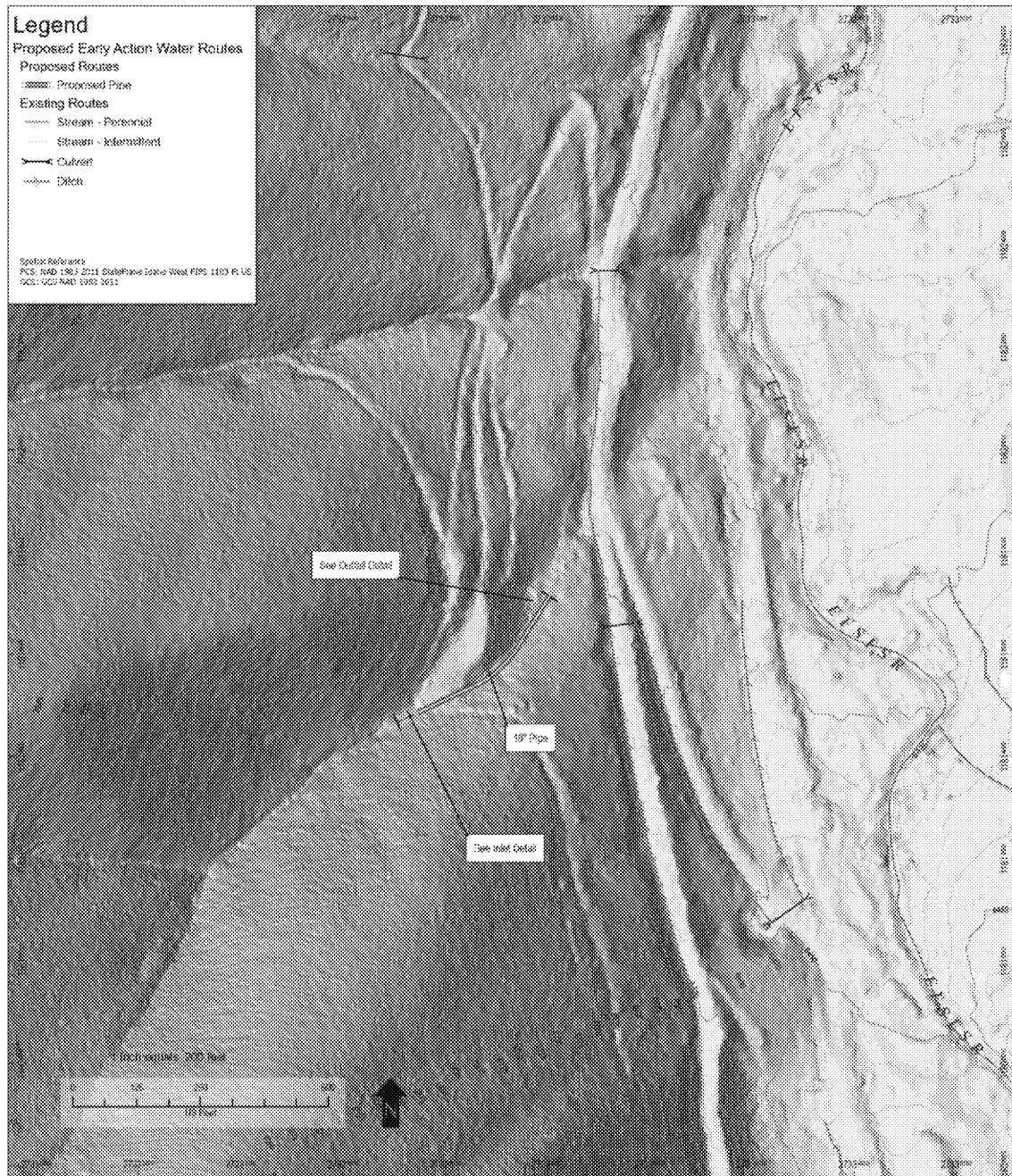
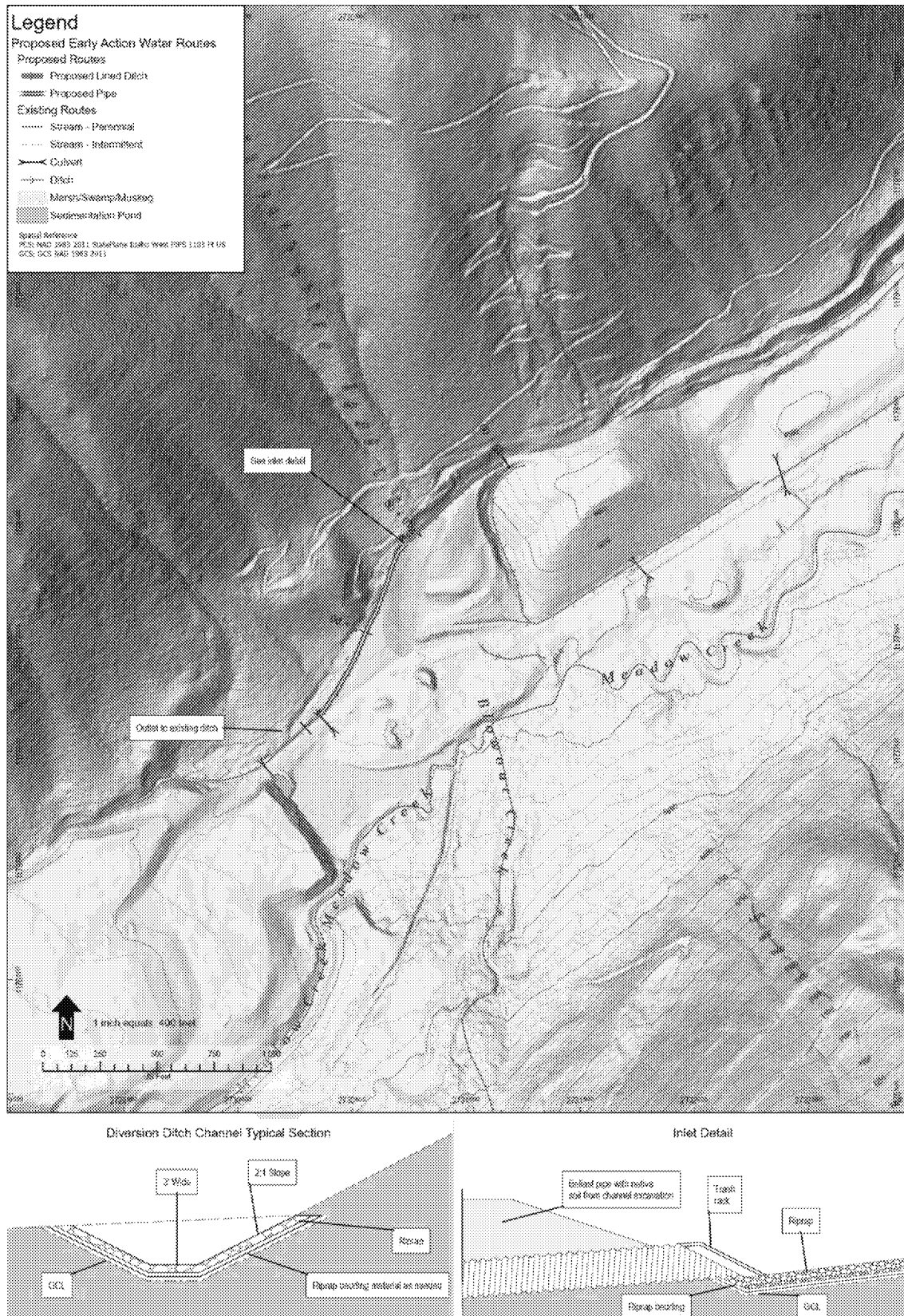


Figure [SEQ Figure * ARABIC]: Removal Action Water Diversion Plan for Former Bradley Mill and Smelter Area

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ATTACHMENTS

ATTACHMENT	PAGE
Attachment A – Stibnite Mine Site ASAOC Statement of Work Schedule	27
Attachment B – Draft TOC for Adit Characterization and RA Alternatives Report.....	31

**Attachment [SEQ Attachment * ALPHABETIC] – Stibnite Mine Site ASAO Statement
of Work Schedule**

Removal Actions (separate documents will be submitted for each Removal Action)

- Draft Removal Action Design Report/Removal Action Work Plan for the Former Bradley Mill and Smelter Area due within 90 days after the Effective Date of the ASAO
- Draft Removal Action Design Report/Removal Action Work Plan for the DMEA Waste Rock Dump Area due within 120 days after the Effective Date of the ASAO
- Draft Removal Action Design Report/Removal Action Work Plan for the Bradley Dumps/Hennessy Creek Area due within 150 days after the Effective Date of the ASAO
- Draft Mine Phase 1 Waste Relocation Scoping Report due within 180 days after the Effective Date of the ASAO
- Final Mine Phase 1 Waste Relocation Scoping Report due within 60 days after receipt of consolidated Agency comments on the draft
- Draft Removal Action Design Report/Removal Action Work Plan for Mine Waste Relocation due within 120 days after receipt of EPA approval of the Final Mine Waste Relocation Scoping Report
- Draft Final Removal Action Design Report/Removal Action Work Plan due within 45 days after receipt of consolidated Agency comments on the draft (one document for each Removal Action)
- Final Removal Action Design Report/Removal Action Work Plan due within 30 days after receipt of consolidated Agency comments on the draft final
- Removal Action construction: notify the Agencies 5 working days before start of construction
- Pre-Final Construction Inspection: 30 days prior to projected Project Completion
- Pre-Final Construction Inspection Report due within 30 days after the Pre-Final Construction Inspection
- Final Construction Inspection due within 30 days after completion of outstanding items identified by the pre-final construction inspection
- Final Construction Inspection Report due within 90 days after the Final Construction Inspection
- Draft Operation, Maintenance and Monitoring Plan due within 90 days after the Pre-Final Construction Inspection
- Draft Final Operation, Maintenance and Monitoring Plan due within 60 days after receipt of consolidated Agency comments on the draft
- Final Operation, Maintenance and Monitoring Plan due within 60 days after receipt of consolidated Agency comments on the draft final, or at the time of issuance of the Draft Final Removal Action Report, whichever comes later

- Draft Annual Performance and Effectiveness Monitoring Report due by April 30 of the following year
- Final Annual Performance and Effectiveness Monitoring Report due within 60 days after receipt of consolidated Agency comments on the draft

Focused Baseline Studies of Adits

- Draft Adit Investigation Work Plan due within 90 days after the Effective Date of the ASAOC
- Draft Final Adit Investigation Work Plan due within 60 days after receipt of consolidated Agency comments on the draft
- Final Adit Investigation Work Plan due within 60 days after receipt of consolidated Agency comments on the draft final
- Draft Characterization and Removal Action Alternatives Report within 120 days after receipt of all validated data from the investigation
- Draft Final Characterization and Removal Action Alternatives Report within 60 days after receipt of consolidated Agency comments on the draft
- Final Characterization and Removal Action Alternatives Report within 60 days after receipt of consolidated Agency comments on the draft final
- Draft Removal Action Design Report / Removal Action Work Plan (one plan for each adit) due within 120 days after Agency notification of the selected Removal Action
- Draft Final Removal Action Design Report/Removal Action Work Plan (one plan for each adit) due within 60 days after receipt of consolidated Agency comments on the draft
- Final Removal Action Design Report/Removal Action Work Plan (one plan for each adit) due within 30 days after receipt of consolidated Agency comments on the draft final

Bridging Phase Removal Action Design

- Draft Bridging Phase Mine Waste Relocation Scoping Report due at the start of ASAOC Year 4, if Respondents elect to enter the Optional Bridge Phase
- Final Bridging Phase Mine Waste Relocation Scoping Report due within 60 days after receipt of consolidated Agency comments on the draft
- Draft Removal Action Design Report/Removal Action Work Plan for Bridging Phase Mine Waste Relocation due within 120 days after receipt of EPA approval of the Final Mine Waste Relocation Scoping Report
- Draft Final Removal Action Design Report/Removal Action Work Plan due within 60 days after receipt of consolidated Agency comments on the draft
- Final Removal Action Design Report/Removal Action Work Plan due within 30 days after receipt of consolidated Agency comments on the draft final

Phase 1 Completion Report

- Draft Interim Completion Reports due within 60 days of completing discrete Phase 1 Removal Action
- Final Interim Completion Reports due with 30 days of Agency comments on the Draft Interim Completion Reports
- Draft Phase 1 Completion Report due 90 days after the end of Phase 1
- Draft Final Phase 1 Completion Report due within 45 days after receipt of consolidated Agency comments on the draft
- Final Phase 1 Completion Report due within 30 days after receipt of consolidated Agency comments on the draft final

Bridging Phase Removal Action Implementation

- Removal Action construction: notify the Agencies 5 working days before start of construction
- Pre-Final Construction Inspection: 30 days prior to projected Bridging Phase Work Completion
- Pre-Final Construction Inspection Report due within 30 days after the Pre-Final Construction Inspection
- Final Construction Inspection due within 30 days after completion of outstanding items identified by the pre-final construction inspection
- Final Construction Inspection Report due within 90 days after the Final Construction Inspection
- Draft Bridging Phase Completion Report due 90 days after the end of the Bridging Phase
- Draft Final Bridging Phase Completion Report due within 45 days after receipt of consolidated Agency comments on the draft Bridging Phase Completion Report
- Final Bridging Phase Completion Report due within 30 days after receipt of consolidated Agency comments on the draft final Bridging Phase Completion Report

Phase 2 Removal Actions

- Deliverables and schedule to be determined

Data Validation Summaries (DVSs):

Phase 3 Removal Actions

- Deliverables and schedule to be determined
- DVSs due within 120 days from the date of collection of the last sample from each sampling event. Within 7 days of the completion of each season's field work, Respondents shall provide written notification to EPA identifying the date of collection of the last sample from each sampling event.

- Draft Interim Deliverables as identified in the SOW, or as required by EPA, shall be due within 30 days receipt of notice by Respondents that said Deliverable is required.
- Final Interim Deliverables due within 60 days of receipt of consolidated Agency

Interim Deliverables comments.

- Quarterly Progress Reports shall be due 15 days after the end of the previous calendar quarter.

Quarterly Progress Reports

¹ Documents may initially be released as “draft final” pending final resolution of issues.

**Attachment [SEQ Attachment * ALPHABETIC] – Draft TOC for Adit Characterization
and RA Alternatives Report**

Executive Summary

1. Introduction
2. Site Characterization
 - 2.1 Site Description and Background
 - 2.2 Previous Response Actions
 - 2.3 Source, Nature and Extent of Contamination
 - 2.4 Analytical Data
3. Identification of Early Action Objectives
 - 3.1 Determination of Removal Action Scope
 - 3.2 Determination of Removal Action Schedule
 - 3.3 Planned PRO activities
4. Identification and Analysis of Removal Action Alternatives
 - 4.1 Effectiveness
 - 4.2 Implementability
 - 4.3 Cost
5. Comparative Analysis of Removal Action Alternatives
 - 5.1 Qualitative Removal Action Alternatives Comparison
 - 5.2 Recommended Removal Action Alternative



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

CHAIRMAN

July 27, 2020

The Honorable Brad Little
Governor
State of Idaho
PO Box 83720
Boise, ID 83720

Dear Governor Little:

Thank you for your letter dated June 5, 2020 requesting that the Stibnite Gold Project be identified as a high priority infrastructure project pursuant to Executive Order (E.O.) 13766, "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects." The Council on Environmental Quality (CEQ) regularly coordinates with other Federal agencies, including the U.S. Department of Agriculture (USDA), to align various permitting improvement and infrastructure initiatives.

Under E.O. 13766, the Chairman of CEQ is required to determine whether an infrastructure project qualifies as a "high priority" infrastructure project in response to a request from a Governor of a State or the head of any executive department or agency. In addition, E.O. 13807, "Establishing Discipline and Accountability in the Environmental Review Process for Infrastructure Projects," adds to the categories of projects that may qualify as high priority infrastructure projects under E.O. 13766.

The U.S. Forest Service (Forest Service) published a notice of intent (NOI) to prepare an environmental impact statement (EIS) for the Stibnite Gold Project, a proposed complex mining project located in Valley County in central Idaho, in the Federal Register on June 5, 2017¹ and is preparing this EIS in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* As described in the NOI, the Stibnite Gold Project requires additional approvals and authorizations by multiple Federal agencies. Based on its review, CEQ has determined that the Stibnite Gold Project qualifies as a high priority infrastructure project in accordance with E.O. 13766.

CEQ has sent a letter to USDA Secretary Perdue, notifying him of this determination and requested that the Forest Service conduct the environmental review in a timely manner consistent with the One Federal Decision policy described in E.O. 13807 and with the related Memorandum of Understanding executed in April 2018. In addition, CEQ has requested that the Forest Service provide it with regular updates and work with the appropriate agencies to list the Stibnite Gold Project on the Permitting Dashboard at <https://www.permits.performance.gov/>.

¹ Notice of Intent to Prepare an Environmental Impact Statement, 82 Fed. Reg. 25759 (June 5, 2017).

Thank you for your request related to this project and for your continued support of the Administration's efforts to improve the efficiency and timeliness of the environmental review process.

Sincerely,

A handwritten signature in cursive script, reading "Mary B. Neumayr".

Mary B. Neumayr
Chairman

cc: Douglas Hoelscher, Deputy Assistant to the President and Director, White House
Intergovernmental Affairs

Privileged and Confidential, Subject to FRE 408

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

Stibnite Mine Site

Midas Gold Corp.,
Idaho Gold Resources Company, LLC,
Stibnite Gold Company, and
Midas Gold Idaho, Inc.

Respondents

Proceeding Under Sections 104, 106(a),
107 and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, 42 U.S.C. §§ 9604,
9606(a), 9607 and 9622

CERCLA Docket No. _____

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement”) is entered into voluntarily by Participating Parties and Respondents. This Settlement provides for the performance of a removal action by Respondents at or in connection with the Site.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (“CERCLA”). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), by Executive Order 12580, 52 Fed. Reg. 2923-26 (1987), and to the Secretary of the United States Department of Agriculture (“Secretary”) by Executive Order 12580, 52 Fed. Reg. 2926 (January 23, 1987), 3 C.F.R. § 13308, 1987 Compilation, p. 193. It was then further delegated to EPA Regional Administrators on September 13, 1987, in and through EPA Delegation Nos. 14-14-A, 14-14-B, 14-14-C and 14-14-D. This authority has since been redelegated by the Regional Administrator, EPA Region 10, to the Office of Superfund Environmental Management Division Director. The Agriculture Secretary’s authority has likewise been delegated to the Chief of the USFS by 7 C.F.R. § 2.60(a)(39), and then re-delegated by the Chief of the USFS to the USFS Region 4 Regional Forester. EPA has notified the State of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

3. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

4. Consistent with Executive Order 12580 and the NCP, EPA is the lead agency for response actions involving the privately owned/operated portions of the Site, while the USFS is the lead agency for response actions involving portions of the Site owned by the United States and administered by the USFS. Notwithstanding that division, the Parties agree that it is appropriate, given fiscal and efficiency priorities, for EPA to be designated as the lead agency for purposes of this Settlement, and as such will take principal responsibility for decisions regarding implementation of the Work and resolving any disputes among the Parties. USFS, the State, and the Tribes agree to serve as supporting participants, and EPA will consult with them in accordance with the terms of this Settlement. The State enters into this Settlement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. §§ 9620(f) and 9621(f), and will serve as Support Agency under this Settlement. It will review responsive data and documents and consult with EPA and the USFS on decisions and approvals made under the Settlement. The Tribes, which are federally recognized and have a governing body known as the Fort Hall Business Council that is asserting exercise of authority pursuant to inherent sovereign power, the Fort Bridger Treaty (15 Stat. 673), and the Constitution and By-Laws of 1936, will serve as a supporting participant under this Settlement. The Tribes will review responsive data and

documents and consult with the EPA and USFS regarding decisions made under this Settlement as further set out in this Settlement.

5. Returning a site of historic mining operations with legacy environmental issues to productive operations while addressing the legacy environmental issues has the potential to benefit the environment, economy, and local community. However, addressing legacy environmental issues before, during, and after operations are reinitiated can pose unique challenges. In recognition of both the potential benefits and challenges of returning the Site to active mining operations, the purpose of this Settlement is to address legacy environmental issues at the Site through a comprehensive, iterative, Site-wide phased restoration approach which prioritizes actions that can occur before mining begins at the Site and allows for continued Work during the construction and operation of the Site, including by collecting data, planning, and relocating legacy waste within the Site. The timeline and Work to be performed under each phase of this Settlement is further set forth in the SOW. As part of this comprehensive Site-wide Settlement approach, the Parties acknowledge that activities proposed in the PRO will also disturb legacy areas at the Site, and as set forth in the PRO, MGII will undertake cleanup and reclamation at the Site before, during, and after the proposed mining in a manner that will benefit the environment and be consistent with the NCP.

II. PARTIES BOUND

6. This Settlement is binding upon the Parties and their heirs, successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement unless otherwise provided in this Settlement or agreed to by the Parties.

7. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

8. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

9. MGII shall act on behalf of Respondents in carrying out the terms of this Settlement and has been designated to act on their behalf. When the term "Respondents" is used in this Settlement, the Parties understand that MGII is acting on behalf of all Respondents, and that all Respondents will be bound by MGII's actions.

10. MGII shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. MGII or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. MGII shall nonetheless be responsible for

ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

11. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“Bridging Phase Work” shall mean the work outlined in Tasks 5-6 of the SOW.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DMEA” shall mean Defense Minerals Exploration Administration.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXXI.

“EFSFSR” shall mean the East Fork of the South Fork of the Salmon River.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the Participating Parties directly incur in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 111 (Work Takeover), Paragraph 134 (Access to Financial Assurance), (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs). Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

“IDEQ” shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

“IGRCLLC” shall mean Idaho Gold Resources Company, LLC.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Legacy Adit Areas” shall include the Meadow Creek Mine adit area, the DMEA adit area, the Cinnabar Tunnel adit area, the Bailey Tunnel outlet area, and the Bonanza adit area.

“Legacy Mine Waste Areas” shall include the Spent Ore Disposal Area (“SODA”) and Bradley Tailings Pile, the Keyway Dam and Marsh area, the former Meadow Creek Mill and Smelter area, the Hecla heap leach pad area, the Canadian Superior heap leach pads area, the DMEA waste rock dump area, the Bradley man camp waste rock dumps area, the Yellow Pine Pit area (also referred to as the Glory Hole), the northwest Bradley waste rock dumps and Hennessy Creek area, the northeast Bradley oxide dumps area.

“MGC” shall mean Midas Gold Corp.

“MGII” shall mean Midas Gold Idaho, Inc.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Participating Parties” shall mean the EPA, USFS, IDEQ, and Tribes.

“Parties” shall mean the Participating Parties and Respondents.

“Phase 1 Work” shall mean the work outlined in Tasks 1-4 of the SOW.

“Phase 2 Work” shall mean the work outlined in Task 7 of the SOW.

“Phase 3 Work” shall mean the work outlined in Task 8 of the SOW.

“PRO” shall mean the Plan of Restoration and Operations filed by MGII with USFS in September 2016 to redevelop portions of the Stibnite Mining District and any amendments filed by MGII and approved by the USFS.

“RA” shall mean this response action.

“RAWP” shall mean removal action work plan or plans.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“RDR” shall mean removal action design report or reports.

“Respondents” shall mean MGC, IGRCLLC, SGC, and MGII.

“Section” shall mean a portion of this Settlement identified by a Roman numeral.

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXX (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“SGC” shall mean Stibnite Gold Company.

“Site” shall mean all areas within the Stibnite Mining District within the following legal description all within the Boise Meridian:

T19N, R9E

Sec 34 – S $\frac{1}{2}$ of SE $\frac{1}{4}$

SEC 35 – S $\frac{1}{2}$ of SW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, W $\frac{1}{2}$ of SE $\frac{1}{4}$

T18N, R9E

Sec 2 – N $\frac{1}{2}$, N $\frac{1}{2}$ of SE $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$

Sec 3 – E $\frac{1}{2}$

Sec 10 – E $\frac{1}{2}$

Sec 11 – S $\frac{1}{2}$, W $\frac{1}{2}$ of NW $\frac{1}{4}$

Sec 14 – NW $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$

Sec 15 – E $\frac{1}{2}$, S $\frac{1}{2}$ of SW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$

Sec 16 – SE $\frac{1}{4}$ of SE $\frac{1}{4}$

Sec 21 – NE $\frac{1}{4}$ of NE $\frac{1}{4}$

Sec 22 – N $\frac{1}{2}$ of NW $\frac{1}{4}$, N $\frac{1}{2}$ of NE $\frac{1}{4}$

in which any Respondent has ownership interest in land or holds patented or unpatented mining claims, including for purposes of this Settlement, the locations commonly identified as the Spent Ore Disposal Area (SODA) and Bradley Tailings Pile, the Keyway Dam and Marsh area, the former Meadow Creek Mill and Smelter area, the Hecla heap leach pad area, the Canadian Superior heap leach pads area, the DMEA waste rock dump area, the Bradley man camp waste rock dumps area, the Yellow Pine Pit area (also referred to as the Glory Hole), the northwest Bradley waste rock dumps and Hennessy Creek area, the northeast Bradley oxide dumps area, Meadow Creek Mine adit area, the DMEA adit area, the Cinnabar Tunnel adit area, the Bailey Tunnel outlet area, and the Bonanza adit area, as well as the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for removal action implementation and materials handling. The Site is further depicted as designated on the Site boundary on the map

attached as Figure 1 to Appendix A. In the event that there is a conflict between the legal description and the map attached as Figure 1 to Appendix A, the legal description in this definition shall control.

“Site COPCs” shall mean aluminum, arsenic, antimony, cyanide, iron, manganese, mercury, and thallium.

“State” shall mean the State of Idaho.

“Statement of Work” or “SOW” shall mean the document describing the activities MGII must perform on behalf of Respondents to implement the removal action pursuant to this Settlement, as set forth in Appendix A and any modifications made thereto in accordance with this Settlement.

“Stibnite Mining District” shall mean the area of historically significant mining located in Stibnite, Valley County, Idaho, approximately 98 miles northeast of Boise, 40 miles east of McCall, and 10 miles east of the community of Yellow Pine in the EFSFSR drainage basin, where Respondents hold patented and unpatented mining claims.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“Tribes” shall mean the Shoshone-Bannock Tribes.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and USFS.

“USFS” shall mean the United States Forest Service, an agency of the United States Department of Agriculture, and its successor departments, agencies, offices, or instrumentalities.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any “hazardous wastes” as defined in the Idaho Hazardous Waste Management Act, Idaho Code 39-4403(8); (e) “pollutants” as defined in IDAPA 58.01.02.010.731; (f) “contaminants” as defined in IDAPA 58.01.11.007.10; (g) “hazardous materials” as defined in IDAPA 58.01.02.010.40; or “deleterious materials” as defined in IDAPA 58.01.02.010.16.

“Work” shall mean all activities and obligations MGII is required to perform on behalf of Respondents under this Settlement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

12. MGII is a wholly owned subsidiary of MGC. Pursuant to the PRO and 36 C.F.R. § 228.3(b), MGII is an “operator,” as defined by the regulation, which is “[a] person conducting or proposing to conduct operations” on the Site.

13. The majority of the mining and processing activity proposed by Respondents in the PRO will take place on patented claims.

14. Historical mining in the Stibnite Mining District mostly occurred in three general areas commonly known as Meadow Creek (or Hangar Flats), Yellow Pine, and West End. Mining operations began in the Stibnite Mining District in the 1920s and expanded rapidly and extensively starting in 1939 during Strategic Minerals Investigations (when large deposits of antimony were discovered by the U.S. Bureau of Mines) and again in 1941 (when tungsten was discovered by U.S. Geological Survey) and continued through the 1950s. During this initial period of mining activity, the mining of gold, silver, antimony, and tungsten mineralized materials was carried out by both underground and, later, open-pit mining methods.

15. During World War II, the Site is estimated to have produced more than 90% of the Nation’s antimony and around 40% of the Nation’s tungsten, materials that were used in advancing the war effort, including munitions, steel, fire retardants, and other purposes. In November 1952, the DMEA awarded the Bradley Mining Company (“Bradley”) two contracts to explore and develop metals deposits at the Yellow Pine and Meadow Creek mines. Strategic mining operations continued through much of the Korean War, and antimony, gold, and tungsten mining and milling ceased in 1952, near the end of the Korean War. From 1956 to 1957, the mill operated on a toll and experimental basis and processed tetrahedrite concentrate materials (an antimony-copper-silver bearing ore) from Coeur d’Alene stockpiles through the mill.

16. A second major period of activity at the Site began with exploration activities in 1972 and was followed by open-pit mining and seasonable on-off heap leaching on five contiguous leach pads between 1982–1998 and one-time heap leaching on an isolated pad from 1987 to 1992. With ore provided by multiple operators from a number of locations, and processed in adjacent heap-leaching facilities, over 10 million tons of ore were mined and processed. During the years of production, millions of cubic yards of mine tailings were deposited at locations within the Site, and in some cases, spent ore was permanently placed over historical mill tailings that had previously been discarded.

17. The Site has been subject to substantial cost recovery litigation under CERCLA all unrelated to the Respondents, and several consent decrees emerged from these actions including *Mobil Oil v. United States*, Civ. No. 99-1467-A (E.D.V.A.) (consent decree filed June 26, 2000); *United States v. Oberbillig* (D. Idaho) (consent decree filed March 18, 2004); and *United States v. Bradley Mining Company*, Case No. 3:08-CV-03968 and *United States v. Bradley Mining Company*, Case No. 3:08-CV-05501 (N.D. Ca.) (consent decree as to both proceedings filed April 19, 2012). In some of the above-noted cost recovery litigation, the Site has been alleged to be a CERCLA “facility” as defined by Section 101 (9) of CERCLA, 42 U.S.C. § 9601 (9). In the *Bradley Mining Company* consent decree, the EPA extended

CERCLA covenants not to sue to itself, as well as the USFS, United States Department of Defense, United States Department of the Interior, and United States General Services Administration.

18. The United States provided public notice of the above-noted consent decrees before they were entered by the court.

19. The prior mining activity at the Site resulted in CERCLA response actions by EPA, the USFS and the IDEQ. Among other actions, minor quantities of legacy tailings were removed, Meadow Creek was re-channelized in 2005, and certain legacy tailings impoundments were covered with clean fill in 2009. Past additional events at the Site include building removal, equipment removal, the 1965 failure of a hydropower dam on the East Fork of Meadow Creek (commonly referred to as “Blowout Creek”), and the creation and storage of Waste Materials deposited at locations within the Site. Notwithstanding multiple completed response actions, legacy tailings and contamination remain buried over much of the Site.

20. Beginning in 1982, IDEQ began monitoring the Site. IDEQ sampled surface water and groundwater for hazardous substances generated by mining operations. Sampling results showed exceedances of cyanide for the EPA quality criteria for water for fresh-water aquatic organisms.

21. On September 25, 1991, the EPA placed the Yellow Pine Mining Area on the Federal Facilities Docket. The Yellow Pine Mining Area site is located along the EFSFSR, 10 miles southeast of the town of Yellow Pine in Valley County, Idaho, in the Payette National Forest, where antimony and gold mining operations took place from the early 1900s until the late 1990s. The USFS initiated a CERCLA Section 104 and 107 response and enforcement action at the Site.

22. Between 1982 and 1999, several diversions of Meadow Creek were completed.

23. In 1999, the USFS completed a time-critical removal action at the pilot plant. The action consisted of covering and capping ponds constructed by Canadian Superior Mining (U.S.) Limited in connection with a gold-processing pilot test. The pilot test used cyanide-leaching technology for ore extracted from the site. By the end of 1999, most of the facilities and haul roads associated with former owner/operator Stibnite Mine, Inc. were reclaimed under a reclamation plan approved and executed by the USFS and IDEQ. Reclamation and closure continued in 2000.

24. In 2002–2003, the USFS completed two time-critical removal actions (“TCRAs”). The first was to remove tailings from the so-called Poison Pond area. The Poison Ponds were located along Meadow Creek south of the Hecla heap leach pad. Approximately 2,500 cubic yards were removed and placed in a repository cell located on the northwest Bradley waste rock dump on patented land. The second TCRA was in the smelter stack area. This action consisted of removing the wood flume and ash to an off-site EPA approved facility. This TCRA also included removal and placement of 400 cubic yards of soil in the same repository cell located on Respondents’ patented lands in the northwest Bradley waste rock

dump. The soil was removed from below the smelter stack flume and placed in an unlined trench.

25. In 2003, IDEQ identified areas of high arsenic concentrations of arsenic in the northwest Bradley waste rock dump, which was an unsecured area with unrestricted public access. In 2004, EPA through its contractor, Environmental Quality Management (“EQM”), implemented a removal action which included excavation of contaminated waste, regrading of the removal area, and placement of clean soil on top.

26. In 2003, a Meadow Creek Engineering Evaluation/Cost Analysis (“EE/CA”) was completed under a USFS contract by Science Applications International Corporation (“SAIC”), including specifications and design of the recommended alternative. Also in 2004, a Biological Assessment was completed, as required by the Endangered Species Act, and submitted to the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

27. In 2004–2005, the USFS completed a CERCLA non-time critical removal action in lower Meadow Creek between Blowout Creek and its confluence with the EFSFSR.

28. Legacy tailings that were contributing elevated levels of arsenic to the stream were excavated from a 19-acre area and placed in an engineered unlined repository covered with waste rock in the Spent Ore Disposal Area (“SODA”) and 3,500 feet of stream channel was reconstructed, providing habitat potentially suitable for salmonid spawning.

29. Elevated arsenic, antimony, and mercury levels have been detected in sampling locations located near the DMEA waste rock dump area associated with tunnel construction by Bradley pursuant to a contract and loan by the United States and supervised by the DMEA during the 1950s.

30. Alluvial groundwater sampled in groundwater wells immediately downgradient of the repository referenced in Paragraph 24 and wells downgradient of the repository referenced in Paragraph 27 regularly show elevated arsenic and antimony concentrations.

31. Respondents have never constructed or operated a mine or performed mining activities on the Site. As set forth in the PRO, MGII is currently seeking a mine operating permit and approval to develop and operate a mining operation that produces gold and silver doré, and antimony concentrates from ore deposits at the Site. In conjunction with that permit and approval process, the USFS is serving as the lead agency for the National Environmental Policy Act (“NEPA”) review.

32. As a result of legacy mining activities at the Site or historical background conditions, Respondents’ current water quality monitoring data indicates the presence of elevated levels of aluminum, arsenic, antimony, cyanide, iron, manganese, mercury, and thallium, which are contaminants of potential concern (“COPCs”). These Site COPCs are among the analytes for which Respondents currently collect data pursuant to EPA-approved protocols associated with the NEPA process.

33. Activities proposed in the PRO will disturb legacy areas at the Site. As set forth in the PRO, MGII will undertake cleanup and reclamation and restoration at the Site before,

during, and after the proposed mining. By entering into this Settlement, the Parties understand that it is the intent of MGII to remove and then productively mine certain legacy tailings that have been previously deposited in areas of the Site. In some cases, such as the SODA or Bradley tailings area, remediation has previously been undertaken under CERCLA.

34. In general, MGII's proposed development of the mineral resources would include construction of fish passage around legacy blockage of the Yellow Pine Pit; removal of the spent ore and tailings from the SODA or Bradley tailings area, removal of the Hecla heap leach pad, placement of tailings in a composite-lined tailings storage facility ("TSF"); removal of a significant portion of the Bradley waste rock dumps around Yellow Pine Pit, placement of development rock in engineered and designed facilities; reclamation and restoration of the Site, including backfill of the Yellow Pine Pit and subsequent reestablishment of the surface waters of the EFSFSR; and various other removal, remediation, and restoration activities.

35. The general sequence of mining will be guided by the restoration aspects of the PRO, which includes backfilling the Yellow Pine Pit with West End development rock to restore the approximate original gradient of the EFSFSR, to provide permanent fish passage, and facilitate aquatic habitat enhancement, and removal of the spent ore and tailings from the SODA prior to construction of the new tailings facility and development of a rock storage facility.

36. The estimates for direct employment from the activity described in the PRO are 594 construction jobs; 583 operations jobs; 160 reclamation jobs; and 44 monitoring jobs.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

37. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes [a] "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

38. Based upon the Findings of Fact, and Conclusions of Law and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

39. MGII shall retain one or more contractors or subcontractors to perform the Work, subject to various provisions to suspend or terminate the Work as more fully set forth herein, and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within seven (7) days after the Effective Date or such date on which a contractor or subcontractor is proposed for selection, whichever date is later. MGII shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least seven (7) days prior to commencement of such performance. EPA retains the right to disapprove of any or all unqualified contractors and/or subcontractors retained by MGII. If EPA disapproves of a selected contractor or subcontractor, within thirty (30) days after EPA's disapproval, MGII shall either (1) retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications, or (2) provide notice to EPA of Respondents' intention to initiate the procedures of Section XV (Dispute Resolution). Respondents may initiate the procedures of Section XV (Dispute Resolution) if they believe that EPA has disapproved a contractor or subcontractor that meets the qualifications of Paragraph 40.

40. With respect to any proposed contractor, MGII shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

41. Within thirty (30) days after the Effective Date, MGII shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 39. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within thirty (30) days following EPA's

disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

42. EPA has designated _____ of the [**insert Regional Office, e.g., Emergency and Enforcement Response Branch, Region ____**], as its Remedial Project Manager ("RPM"). EPA and Respondents shall have the right, subject to Paragraph 41, to change their respective designated RPM or Project Coordinator. Respondents shall notify EPA seven (7) days before such a change is made. The initial notification by Respondents may be made orally, but shall be promptly followed by a written notice.

43. The RPM shall be responsible for overseeing Respondents' implementation of this Settlement. The RPM shall have the authority vested in an RPM by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

VIII. WORK TO BE PERFORMED

44. Respondents shall perform the Work outlined in the SOW, attached as Appendix A, which will include studying and addressing the Site COPCs. As specified more fully in the SOW, the Work to complete in this comprehensive Site-wide removal action shall be broken into multiple removal actions and phases with an optional "Bridging Phase" between Phase 1 and Phase 2.

45. Respondents shall perform, at a minimum, all actions necessary to implement the Phase 1 Work. Phase 1 Work may begin after EPA approves the Phase 1 RAWP and must be completed within the timeframe set forth in this Settlement and the SOW.

46. Respondents may elect to terminate the Settlement at the end of any phase in accordance with Section XXVIII (Notice of Completion of Work) and Section XXIX (Termination).

47. Respondents may elect to enter into the Bridging Phase if they have not received all mine permits and approvals necessary to commence construction at the Site at the end of Phase 1. The Bridging Phase may last for up to one year after EPA approves the Bridging Phase RDR/RAWP so long as Bridging Phase Work occurs during the year following the approval of the Bridging Phase RDR/RAWP.

48. As soon as Respondents receive all mine permits and approvals necessary to commence construction at the Site and complete either Phase 1 Work or the Bridging Phase Work, they may elect to enter into Phase 2.

49. At the completion of the Phase 2 Work, Respondents may elect to enter into Phase 3. During Phase 3, this Settlement may be terminated in accordance with Section XXIX (Termination) if substantial Phase 3 Work is not performed on a continual basis. The Parties recognize that the weather conditions at the Site will limit Site access and may prevent certain Work during portions of the year. The Parties agree that Work will be deemed continual for purposes of this Settlement so long as Work that requires physical access to the Site continues

during the time period when the MGII is able to reasonably access the Site and it is practicable and feasible to perform the Work. The Parties recognize that Site conditions will vary from year to year, but at no time will Respondents be required to perform Work that requires physical access to the Site between the months of November and May.

50. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

51. Work Plan and Implementation

a. Respondents shall submit to EPA for approval a draft work plan for performing Phase 1 of the removal action (the “Phase 1 RAWP”) in accordance with the schedule set forth in the SOW. The draft Phase 1 RAWP shall provide a description of, schedule for, the actions required by this Settlement for the Phase 1 Work.

b. EPA may approve, disapprove, require revisions to, or modify the draft Phase 1 RAWP in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Phase 1 RAWP in accordance with the schedule set forth in the SOW. Respondents shall implement the Phase 1 RAWP as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Phase 1 RAWP, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Phase 1 RAWP, Respondents shall commence implementation of the Work in accordance with the schedule included therein and shall have four (4) years from the date of the approval of the Phase 1 RAWP to complete the Phase 1 Work. Respondents shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. If Respondents elect to enter into the Bridging Phase in accordance with Section XXVIII (Notice of Completion of Work), Respondents shall submit to EPA for approval a draft work plan for performing the Bridging Phase Work of the removal action (the “Bridging Phase RAWP”) in accordance with the schedule set forth in the SOW. The draft Bridging Phase RAWP shall provide a description of, and schedule for, the actions required by this Settlement for the Bridging Phase Work.

e. EPA may approve, disapprove, require revisions to, or modify the draft Bridging Phase RAWP in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Bridging Phase RAWP in accordance with the schedule set forth in the SOW. Respondents shall implement the Bridging Phase RAWP as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Bridging Phase RAWP, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

f. Upon approval or approval with modifications of the Bridging Phase RAWP, Respondents shall commence implementation of the Work in accordance with the

schedule included therein and shall have one (1) year from the date of the approval of the Bridging Phase RAWP to complete the Bridging Phase Work. Respondents shall not commence or perform any Bridging Phase Work except in conformance with the terms of this Settlement.

g. If Respondents elect to enter into Phase 2 in accordance with Section XXVIII (Notice of Completion of Work), Respondents shall submit to EPA for approval a draft work plan for performing the Phase 2 Work of the removal action (the "Phase 2 RAWP") in accordance with the schedule set forth in the SOW. The draft Phase 2 RAWP shall provide a description of, and schedule for, the actions required by this Settlement for the Phase 2 Work.

h. EPA may approve, disapprove, require revisions to, or modify the draft Phase 2 RAWP in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Phase 2 Removal Work Plan in accordance with the schedule set forth in the SOW. Respondents shall implement the Phase 2 RAWP as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Phase 2 RAWP, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

i. Upon approval or approval with modifications of the Phase 2 RAWP, Respondents shall commence implementation of the Phase 2 Work in accordance with the schedule included therein and shall have three (3) years from the date of the approval of the Phase 2 RAWP to complete the Phase 2 Work. Respondents shall not commence or perform any Phase 2 Work except in conformance with the terms of this Settlement.

j. If Respondents elect to enter into Phase 3 in accordance with Section XXVIII (Notice of Completion of Work), Respondents shall submit to EPA for approval a draft work plan for performing the Phase 3 Work of the removal action (the "Phase 3 RAWP") in accordance with the schedule set forth in the SOW. The draft Phase 3 RAWP Plan shall provide a description of, and schedule for, the actions required by this Settlement for the Phase 3 Work.

k. EPA may approve, disapprove, require revisions to, or modify the draft Phase 3 RAWP in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Phase 3 RAWP in accordance with the schedule set forth in the SOW. Respondents shall implement the Phase 3 RAWP as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Phase 3 RAWP, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

l. Upon approval or approval with modifications of the Phase 3 RAWP, Respondents shall commence implementation of the Phase 3 Work in accordance with the schedule included therein and shall have eleven (11) years from the date of the approval of the Phase 3 RAWP to complete the Phase 3 Work. Respondents shall not commence or perform any Phase 3 Work except in conformance with the terms of this Settlement.

m. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW and/or any RAWPs shall be reviewed and approved by EPA in accordance with this Paragraph.

n. Within thirty (30) days after EPA's modification or disapproval of any RAWP, Respondents may provide notice to EPA of Respondents' intention to initiate the procedures of Section XV (Dispute Resolution). Respondents may initiate the procedures of Section XV (Dispute Resolution) if they believe that EPA has unreasonably modified or disapproved a RAWP.

52. **Duty to Cooperate.** The Parties recognize that the weather conditions at the Site will limit Site access and may prevent certain Work during portions of the year, and that delays in approvals necessary to perform the Work can have significant impacts on the timeline for completion of the Work. Participating Parties agree to provide timely review and responses to the Respondents' submissions. When the Work is delayed by the review of such submissions, the Parties agree that the timeline for the performance of the Work under any phase shall be extended accordingly. The Parties may invoke the Dispute Resolution procedures in Section XV (Dispute Resolution) regarding any disagreement as to the cause of the delay or the extent of the extension of time.

53. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to the RPM at **[insert RPM's name, address, phone number, email]**. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 53.b. All other deliverables shall be submitted to EPA in the form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA with paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. **[Specify the EDD format that the Region uses.]** Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format **[or insert Regionally-preferred spatial file format]**; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the

Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

54. **Health and Safety Plan.** In accordance with the schedule set forth in the SOW, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaos.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. **[NOTE: Regions may provide more detail, e.g., evacuation plans, etc.]** Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

55. **Quality Assurance, Sampling, and Data Analysis**

a. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Within seven (7) days after the Effective Date or before commencing applicable Work, Respondents shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the SOW and/or applicable Removal Work Plan, the NCP and **[applicable guidance documents]**, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement. The

Sampling and Analysis Plan may be updated and modified as necessary and agreed upon by EPA and Respondents for each phase of the Work.

c. Respondents shall ensure that Participating Parties' personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<http://www3.epa.gov/ttnamti1/airtox.html>).

d. However, upon approval by EPA, after a reasonable opportunity for review and comment by the State, Respondents may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Respondents shall provide split or duplicate samples to or its authorized representatives. Respondents shall notify the Participating Parties not less than seven (7) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, the United States and the State shall have the right to take any additional

samples that they deem necessary. Upon request, the United States or the State shall provide to Respondents split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

f. Respondents shall submit to the Participating Parties the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

g. Respondents waive any objections to any data gathered, generated, or evaluated by Participating Parties or Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the Work, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days after the monthly progress report containing the data.

56. **Community Involvement Plan.** EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, Respondents shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondents' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondents shall establish a community information repository at or near the Site to house one copy of the administrative record.

57. **Progress Reports.** Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a quarterly basis, from the date of receipt of EPA's approval of the Phase 1 RAWP until Termination of the Settlement pursuant to Section XXIX (Termination), unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

58. **Phase 1 Completion Report.** The Parties recognize that the Scope of Work outlines five distinct actions that are part of Phase 1 of the comprehensive Site-wide RA: (1) the Bradley Dumps and Hennessy Creek Area RA, (2) DMEA Waste Rock Dump Area RA, (3) Former Bradley Mill and Smelter Area RA, (4) the Phase 1 Mine Waste Relocation, and (5) the Baseline Studies of Adits. Within sixty (60) days after completion of each of the five distinct actions in the Phase 1 Work required by this Settlement, other than continuing obligations listed

in Paragraph 143 (Notice of Completion), Respondents shall submit for EPA review and approval an Interim Completion Report summarizing the actions taken to comply with this Settlement. At the completion of all Phase 1 Work, Respondents shall submit the Final Phase 1 Completion Report, which shall be a compilation of the Interim Completion Reports for each of the discrete actions undertaken in Phase 1. The Final Phase 1 Completion Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final Phase 1 Completion Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with Phase 1 of the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final Phase 1 Completion Report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondents' Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

59. **Bridging Phase Completion Report.** If Respondents elect to enter into the Bridging Phase, then within sixty (60) days after completion of all Bridging Phase Work required by this Settlement, other than continuing obligations listed in Paragraph 143 (Notice of Completion), Respondents shall submit for EPA review and approval a final Bridging Phase Completion Report summarizing the actions taken to comply with this Settlement. The final Bridging Phase Completion Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The Bridging Phase Completion Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement during the Bridging Phase, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The Bridging Phase Completion Report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondents' Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware

that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

60. **Phase 2 Completion Report.** If Respondents elect to enter into Phase 2, then within sixty (60) days after completion of all Phase 2 Work required by this Settlement, other than continuing obligations listed in Paragraph 143 (Notice of Completion), Respondents shall submit for EPA review and approval a final Phase 2 Completion Report summarizing the actions taken to comply with this Settlement. The final Phase 2 Completion Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled “OSC Reports.” The Phase 2 Completion Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement during Phase 2, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final Phase 2 Completion Report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondents’ Project Coordinator: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

61. **Phase 3 Report.** If Respondents elect to enter into Phase 3, then within sixty (60) days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 143 (Notice of Completion), Respondents shall submit for EPA review and approval a final completion report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled “OSC Reports.” The final completion report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final completion areport shall also include the following certification signed by a responsible corporate official of a Respondent or Respondents’ Project Coordinator: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I

am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

62. Off-Site Shipments

a. Respondents may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility’s state and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA’s “Guide to Management of Investigation Derived Waste,” OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

IX. PROPERTY REQUIREMENTS

63. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by one of the Respondents, MGII agrees to provide the Participating Parties, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, as may be needed to implement this Settlement. The Parties acknowledge that while the Site is in operations during Phase 2 or Phase 3, the Respondents may reasonably restrict Site access to accommodate health, safety, and operational considerations.

64. The Respondents shall require that assignees, successors in interest, and any other parties with rights to use the Site shall provide access and cooperation to the Participating Parties, and their authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. The Respondents shall require that assignees, successors in interest and other parties with rights to use the Site implement and

comply with any land use restrictions and institutional controls on the Site in connection with the Work, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Site. The Respondents shall provide a copy of this Settlement to any current and other party with rights to use the Site as of the Effective Date.

65. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than the Parties, MGII shall use best efforts to secure an agreement, enforceable by Respondents and the United States, providing that such owner shall provide the Parties, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement; and refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or unduly interfere with or adversely affect the implementation or integrity of the Work. MGII shall provide a copy of such access agreement(s) to EPA.

66. To the extent any action under this Settlement Agreement is to be performed in areas owned by or in possession of USFS, USFS shall cooperate with MGII to allow MGII to perform the Work, including by executing an agreement with MGII as described in Paragraph 59 agreeing to provide the Parties, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement; and refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or unduly interfere with or adversely affect the implementation or integrity of the Work.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Site:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW and as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 111 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section X (Access to Information); and

(9) Assessing Respondents' compliance with the Settlement.

67. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

68. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

69. In the event of any Transfer of the Site, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Site.

70. If Respondents elect to enter into subsequent phases after completing Phase 1, and decides to sell a material amount of their claims at, or other rights to operate at, the Site while in the process of performing the Work in any subsequent phase, then the purchaser may elect to assume the responsibilities under this Settlement and complete the phase of the Work occurring at the time of the Transfer. Respondents must provide the United States and the State with notice that a purchaser intends to assume the responsibilities under this Settlement fourteen (14) days before the Transfer. Such assumption does not relieve Respondents of their obligation to insure the Work remaining for the on-going phase is performed.

71. If the purchaser elects not to assume the responsibilities under this Settlement and complete the phase of the Work occurring at the time of the Transfer, or if Respondent and purchaser cannot demonstrate to EPA's reasonable satisfaction that purchaser can perform the responsibilities under this Settlement, then Respondents will pay EPA from the proceeds of the Transfer an amount equal to the estimated cost for EPA to complete the remaining work under the phase of work that Respondents are in at the time of the Transfer, less any sum remaining to EPA through any existing Financial Assurance instrument or account, within thirty (30) days of the sale. EPA shall expend such funds to complete the Work for the phase of Work occurring at the time of the Transfer. Respondents must provide EPA with notice within seven (7) days of such Transfer concluding, including an engineering estimate for the cost of completing the

remaining work under the phase of work that Respondents are in at the time of the Transfer, less any sum remaining in any existing Financial Assurance instrument or account. Respondents must ensure that the Parties have continued access to the Site following the Transfer as necessary to implement this Settlement.

72. The Parties may initiate the procedures of Section XV (Dispute Resolution) regarding the amount estimated by Respondents under Paragraph 70 if they determine that Respondents made a mathematical error or failed to include a cost item required to be accounted for, or if they believe that EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP and which therefore need not be accounted for within the estimate. To initiate such dispute, the challenging Party shall submit a Notice of Dispute in writing to the other Parties within thirty (30) days after receipt of the estimate.

X. ACCESS TO INFORMATION

73. Respondents shall provide to the Participating Parties, upon request, copies of all non-privileged, non-protected records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to the United States and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

74. Privileged and Protected Claims

a. Respondents may assert all or part of a Record requested by a Participating Party is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 74.b, and except as provided in Paragraph 74.c.

b. If Respondents assert such a privilege or protection, they shall provide the requesting Participating Party with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to the requesting Participating Party in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until the requesting Participating Party has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding:
(1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other

Record that evidences conditions at or around the Site related to this Settlement, except data that is related to assessments of mineral deposits or associated economic costs and returns may be claimed as protected; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

75. **Business Confidential Claims.** Respondents may assert that all or part of a Record provided to any of the Parties under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records that Respondents claim to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents. If such records are sought by a Participating Party other than EPA the Respondents may decline to produce them and may provide only such information as is required under Subsection 74.b.

76. Notwithstanding any provision of this Settlement, the United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

77. Until ten (10) years after EPA provides Respondents with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work; provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

78. At the conclusion of the document retention period, Respondents shall notify the United States and the State at least ninety (90) days prior to the destruction of any such Records, and, upon request by the United States or the State and except as provided in Paragraph 74

(Privileged and Protected Claims), Respondents shall deliver any such Records to the United States or the State.

79. Each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all United States and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

80. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondents shall include ARARs selected by EPA in the RAWPs.

81. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

82. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at [insert **Regional spill phone number**] of the incident or Site conditions. In the event that Respondents fail to take

appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

83. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at [insert Regional spill phone number], and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

84. For any event covered under this Section, Respondents shall submit a written report to EPA within seven (7) days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF RESPONSE COSTS

85. **Payments for Future Response Costs.** Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

86. **Payment of Sum for Future Response Costs.** On a periodic basis, EPA will send Respondents a bill requiring payment that includes a cost summary for Future Response Costs incurred directly by Participating Parties, delineated by the Participating Party. Within sixty (60) days of receipt, Respondents shall make all payments as follows:

a. [\$] to EPA by Fedwire Electronic Funds Transfer (EFT) to: "Federal Reserve Bank of New York, ABA = 021030004, Account = 68010727, SWIFT address = FRNYUS33, 33 Liberty Street, New York, NY 10045, Field Tag 4200 of the Fedwire message should read 'D 68010727 Environmental Protection Agency' and shall reference Site/Spill ID Number [] and the EPA docket number for this action." At the time of payment, MGII shall send notice that payment has been made to [insert names and mailing addresses of Regional Financial Officer and any other receiving officials at EPA].

b. [\$] to USFS by []. At the time of payment, Respondents shall send notice that payment has been made to [insert names and mailing addresses of receiving officials at USFS.] At the time of payment, Respondents shall send notice that payment has been made to [insert names and mailing addresses of Regional Financial Officer and any other receiving officials at USFS.]

c. [\$] to IDEQ by []. At the time of payment, MGII shall send notice that payment has been made to [insert names and mailing addresses of receiving officials at IDEQ.]

d. [\$] to The Tribes by [_____]. At the time of payment, MGII shall send notice that payment has been made.

87. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Participating Parties by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

88. **Contesting Future Response Costs.** Respondents may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 85 (Payments for Future Response Costs) if they determine that such billed Future Response Costs included a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe a billed Future Response Costs resulted from incurred excess costs as a direct result of an action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the RPM within thirty (30) days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs in the manner described in Paragraph 85, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five (5) days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) in the manner described in Paragraph 85. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail in the manner described in Paragraph 85. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes under Respondents' obligation to reimburse any Participating Party for its Future Response Costs.

XV. DISPUTE RESOLUTION

89. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving any disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally. Any performance obligation under this Settlement which is the subject of a Notice of Dispute shall be tolled upon receipt of the notice of a Party's

intent to invoke the dispute resolution provisions under the Section, and shall remain tolled until the dispute is resolved.

90. **Informal Dispute Resolution.** If Respondents object to any Participating Party action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA and any other Party that is the subject of the dispute a written Notice of Dispute describing the objection(s) within thirty (30) days after such action. Respondents and the Participating Party whose action is the subject of the dispute shall have thirty (30) days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

91. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an EPA management official at the Region X Chief Counsel level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

92. Except as provided in Paragraph 88 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph 101, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

93. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. The Parties recognize that weather conditions, including late or early season deep freezes, heavy snow fall, and avalanches may result in force majeure events at the Site. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

94. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 10, within ten (10) days of when Respondents first knew that the event might cause a delay. Within five (5) days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 93 and whether Respondents have exercised their best efforts under Paragraph 93, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

95. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

96. If Respondents elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 93 and 94. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

97. The failure by Participating Parties to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XVII. STIPULATED PENALTIES

98. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 99.a for failure to comply with the obligations specified in Paragraphs 99.b unless excused under Section XVI (Force Majeure). “Comply” as used in the previous sentence include compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

99. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 99.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,500	15th through 30th day
\$5,000	31st day and beyond

b. Obligations

(1) Payment of any amount due under Section XIV (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXV (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 88 (Contesting Future Response Costs).

(4) To achieve major deliverables and milestones under the SOW.

100. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 111 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of _____. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 111 (Work Takeover) and 134 (Access to Financial Assurance).

101. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within fifteen (15) days after the agreement or the receipt of EPA’s decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 51 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA’s receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Region X Chief Counsel level or

higher, under Paragraph 91 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

102. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

103. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 85 (Payments for Future Response Costs).

104. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 101 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 103 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

105. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Settlement.

106. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 111 (Work Takeover).

107. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVIII. COVENANTS BY THE PARTICIPATING PARTIES

108. Except as provided in Section XIX (Reservations of Rights by the United States), the Participating Parties covenant not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY THE UNITED STATES

109. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

110. The covenants set forth in Section XVIII (Covenants by Participating Parties) do not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. liability for failure by Respondents to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the United States for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

111. Work Takeover

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of thirty (30) days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 111.a, Respondents have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 111.b. Funding of Work Takeover costs is addressed under Paragraph 134 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in Paragraph 91 (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 111.b. However, notwithstanding Respondents’ invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 111.b until the earlier of (1) the date that Respondents remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 91 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY RESPONDENTS

112. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

113. Except as provided in Paragraph 116 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the Participating Parties bring a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by the United States), other than in 110.d (criminal liability), or 110.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

114. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

115. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

116. **Waiver of Claims by Respondents**

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

b. Exceptions to Waiver

(1) The waiver[s] under this Paragraph 116 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver[s] if such person asserts a claim or cause of action relating to the Site against such Respondent.

XXI. OTHER CLAIMS

117. By issuance of this Settlement, the United States assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

118. Except as expressly provided in Paragraphs 116 (Waiver of Claims by Respondents) and Section XVIII (Covenants by Participating Parties), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

119. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

120. Except as provided in Paragraphs 116 (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

121. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work and Future Response Costs.

122. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

123. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

124. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by the Participating Parties).

XXIII. INDEMNIFICATION

125. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

126. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

127. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

128. No later than fourteen (14) days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the [Site name, City, State] and the EPA docket number for this action.

XXV. FINANCIAL ASSURANCE

129. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of \$[] ("Estimated Cost of the Phase 1 Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by a Respondent that it meets the financial test criteria of Paragraph 130, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 129.

130. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 129.e or 129.f must, within thirty (30) days of the Effective Date:

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least \$10 million; and

- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance – Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

131. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 129.e or 129.f must also:

a. Annually resubmit the documents described in Paragraph 130.b within ninety (90) days after the close of the affected Respondent's or guarantor's fiscal year;

b. Notify EPA within thirty (30) days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within thirty (30) days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in

Paragraph 130.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

132. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within thirty (30) days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Respondents shall follow the procedures of Paragraph 135 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

133. If Respondents elect to enter into the Bridging Phase, Phase 2, or Phase 3 under this Settlement, then they will be required to secure financial assurance for the benefit of EPA equal to the estimated cost of the work for that phase thirty (30) days before entering into that phase. The financial assurance for each phase must be one or more of the mechanisms outlined in this Section and otherwise comply with the requirements in this Section.

134. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 111.b, then, in accordance with any applicable financial assurance mechanism EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 134.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 134.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 111.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [and/or related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 129.e or 129.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to

be performed. Respondents shall, within seven (7) days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 134 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Stibnite Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 134 must be reimbursed as Future Response Costs under Section XIV (Payments of Response Costs).

135. Modification of Amount, Form, or Terms of Financial Assurance.

Respondents may submit, on any anniversary of the Effective Date, upon the receipt of EPA approval of any Interim Completion Report, or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA, after a reasonable opportunity for review and comment by the State, will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. When a modification request is based upon EPA's approval of an Interim Completion Report, EPA shall approve such modification upon receipt of revised engineering estimates for the costs of remaining Phase 1 Work. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within thirty (30) days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism.

136. Release, Cancellation, or Discontinuation of Financial Assurance.

Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work following any phase of work under Section XXVIII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

XXVI. MODIFICATION

137. The RPM may modify any plan or schedule or SOW in writing. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Respondents and EPA.

138. If Respondents seek permission to deviate from any approved RAWP or schedule or the SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 137.

139. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

140. Within thirty (30) days after EPA's modification any plan or schedule, Respondents may provide notice to EPA of Respondents' intention to initiate the procedures of Section XV (Dispute Resolution). Respondents may initiate the procedures of Section XV (Dispute Resolution) if they believe that EPA has unreasonably modified any plan or schedule.

XXVII. ADDITIONAL REMOVAL ACTION

141. If EPA determines that additional removal actions not included in a RAWP or other approved plan(s) are necessary to protect public health, welfare, or the environment, and such additional removal actions are consistent with the SOW, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within thirty (30) days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall either (1) submit for approval by EPA a RAWP for the additional removal actions or (2) provide notice to EPA of Respondents' intention to initiate the procedures of Section XV (Dispute Resolution). Respondents may initiate the procedures of Section XV (Dispute Resolution) if they believe that EPA has unreasonably determined that additional removal actions are necessary to protect public health, welfare, or the environment, or that such additional removal actions are consistent with the SOW. If Respondents elect to submit a RAWP, the RAWP shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the RAWP pursuant to Paragraph 51 (Work Plan and Implementation), Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein.

142. This Section does not alter or diminish the RPM's authority to make modifications to any plan or schedule pursuant to Section XXVI (Modification).

XXVIII. NOTICE OF COMPLETION OF WORK

143. When EPA determines, after EPA's review of the final Phase 1 Completion Report, that all Phase 1 Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of

Future Response Costs and Record Retention, EPA will provide written notice to Respondents. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Phase 1 RDR/RAWP if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Phase 1 RAWPs and shall submit a modified Phase 1 Completion Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Phase 1 RAWPs shall be a violation of this Settlement.

144. Within thirty (30) days or receipt of a Notice of Completion for Phase 1 Work from EPA, Respondents shall notify Participating Parties as to whether Respondents elect to (1) terminate the Settlement, (2) enter into the Bridging Phase, or (3) enter into Phase 2.

145. When EPA determines, after EPA's review of the final Bridging Phase Completion Report, that all Bridging Phase Work has been fully performed in accordance with this Settlement, EPA will provide written notice to Participating Parties. If EPA determines that such Bridging Phase Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Bridging Phase RDR/RAWP if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Bridging Phase RAWP and shall submit a modified Bridging Phase Completion Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Bridging Phase RAWP shall be a violation of this Settlement.

146. Within thirty (30) days or receipt of a Notice of Completion for the Bridging Phase Work from EPA, Respondents shall notify Participating Parties as to whether Respondents elect to enter into Phase 2. Respondents shall notify Participating Parties as to whether Respondents election to (1) terminate the Settlement, (2) conduct the Phase 2 Work under this Settlement, (3) conduct the Phase 2 Work under a modified Plan of Restoration and Operations, or (4) conduct the Phase 2 Work under a Clean Water Act permit. If Respondents intend to conduct Phase 2 Work then they must also submit a certification to EPA stating that they have received all permits and approvals necessary to commence construction at the Site.

147. Respondents may elect to enter into Phase 2

- a. if Respondents have obtained all mine permits and approvals necessary to commence construction at the Site; and
- b. Respondents have completed either the Phase 1 Work or the Bridging Phase Work.

148. If Respondents elect to conduct Phase 2 Work under the Settlement, then EPA and Respondents may modify as needed, the SOW and will develop a Phase 2 RAWP. In considering modifications and determining the schedule for Phase 2 Work, EPA will take into consideration MGII's approved mine plan and mine operations.

149. When EPA determines, after EPA's review of the final Phase 2 Completion Report, that all Phase 2 Work has been fully performed in accordance with this Settlement, EPA

will provide written notice to Participating Parties. If EPA determines that such Phase 2 Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Phase 2 RDR/RAWP if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Phase 2 RAWP and shall submit a modified Phase 2 Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Phase 2 RAWP shall be a violation of this Settlement.

150. Within thirty (30) days or receipt of a Notice of Completion for the Phase 2 Work from EPA, Respondents shall notify Participating Parties as to whether Respondents elect to (1) conduct the Phase 3 Work under this Settlement, (2) conduct the Phase 3 work under a modified Plan of Restoration and Operations, or (3) conduct the Phase 3 work under a Clean Water Act permit.

151. If Respondents elect to conduct Phase 3 Work under the Settlement, then EPA and Respondents may modify as needed, the SOW and will develop a Phase 3 RAWP. In considering modifications and determining the schedule for Phase 3 Work, the Parties will take into consideration MGII's approved mine plan and mine operations.

152. When EPA determines, after EPA's review of the Phase 3 Completion Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, EPA will provide written notice to Participating Parties. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Phase 3 RDR/RAWP if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Phase 3 RAWP and shall submit a modified Phase 3 Completion Report in accordance with the EPA notice. Failure by Respondents to implement the approved Phase 3 RAWP shall be a violation of this Settlement.

153. Respondents may initiate the procedures of Section XV (Dispute Resolution) regarding EPA's determination that Work under any phase has not been completed in accordance with this Settlement. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the RPM within thirty (30) days after receipt of EPA's written notice.

XXIX. TERMINATION

154. This Settlement will terminate upon any of the following events:

- a. Respondents elect to terminate the Settlement after the completion of Phase 1 in accordance with Section XXVIII (Notice of Completion of Work);
- b. Respondents elect to enter into the Bridging Phase and do not have all mine permits and approvals necessary to commence construction at the Site at the completion of the Bridging Phase;
- c. Respondents elect to enter into the Bridging Phase and do not conduct Bridging Phase Work during the one year Bridging Phase;

d. Respondents elect to terminate the Settlement after the completion of the Bridging Phase in accordance with Section XXVIII (Notice of Completion of Work);

e. Respondents elect to terminate the Settlement after the completion of Phase 2 in accordance with Section XXVIII (Notice of Completion of Work);

f. Respondents elect to enter into Phase 3 and do not substantially perform the Phase 3 Work on a continual basis; or

g. At the completion of all Work in accordance with Section XXVIII (Notice of Completion of Work).

155. In the event that any Party seeks to terminate this agreement on the basis that required Work is not being substantially performed on a continual basis, the Party must first give notice to the other Parties and provide Respondents with sixty (60) days to cure. Inability to perform work due to Force Majeure or any Participating Party's failure to provide timely approvals will not constitute grounds for termination. Within thirty (30) days of receiving notice, any other Party may initiate the procedures of Section XV (Dispute Resolution) to contest the proposed termination.

XXX. INTEGRATION/APPENDICES

156. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

a. "Appendix A" is the SOW.

XXXI. EFFECTIVE DATE

This Settlement shall be effective ___ days after the Settlement is signed by the Regional Administrator or his/her delegatee.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated

[Name]

Regional Administrator (or designee/delegatee), Region 10

U.S. FOREST SERVICE

Dated

[Name]

STATE OF IDAHO:

Dated

[Name]

SHOSHONE BANNOCK TRIBES:

Dated

[Name]

RESPONDENTS:

Dated

[Name]
Midas Gold Idaho, Inc.

Dated

[Name]
Midas Gold Corp.

Dated

[Name]
Idaho Gold Resources Company LLC

Dated

[Name]
Stibnite Gold Company

Message

From: Tenpas, Ron [rtenpas@velaw.com]
Sent: 6/12/2020 6:44:30 PM
To: Mackey, Cyndy [Mackey.Cyndy@epa.gov]
Subject: Greetings

Cyndy,

It was good to "see you" on the call today, even if we didn't really get a chance to talk. I wanted to simply say hello in follow-up. I hope all is well with you, family and those you are working with. Strange times but hopefully ones that have not been difficult for you, other than the point made on the call – Fridays now seem open game for many conferences.

Regards,

Ron

Ronald J. Tenpas
Partner

Vinson&Elkins

E rtenpas@velaw.com	Vinson & Elkins LLP
W +1.202.639.6791	2200 Pennsylvania Avenue NW
	Suite 500 West
	Washington, DC 20037

[bio](#)

[vcard](#)

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Thank You.

Message

From: Tenpas, Ron [rtenpas@velaw.com]
Sent: 2/28/2020 1:31:47 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
CC: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Notice of potential discovery related to Stibnite project
Attachments: EPA Notice of Discovery Letter.PDF

Elizabeth,

We wanted you to be aware of the attached letter sent to the EPA General Counsel's office related to the potential need for third party discovery directed at EPA in the Clean Water Act action that Midas is facing. I understand you and Brad have had some productive conversations recently related to a draft AOC Midas prepared. Obviously completing that AOC could have a bearing on the viability of the Nez Perce Tribe's Clean Water action during the period that an RI/FS is being performed. Thus, while we remain hopeful that the lawsuit and the Tribe's concerns will be resolved through this alternative statutory mechanism that Congress established in Section 113(h), we are having to plan for the contingency that the CWA litigation will become very active. With respect to relevant information in the possession of the United States, we'd like to proceed in the most courteous way possible. Hence this advance notice to the Agency as we begin to turn to the discovery process in the Nez Perce suit.

I'm happy to discuss this further with you if it would be helpful.

Regards,

Ron Tenpas

Ronald J. Tenpas
Partner

Vinson&Elkins

E rtenpas@velaw.com
W +1.202.639.6791

Vinson & Elkins LLP
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037

[bio](#)

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Thank You.

ED_004715A_00030859-00001

Vinson&Elkins

Ronald J. Tenpas rtenpas@velaw.com
Tel +1.202.639.6791 Fax +1.202.879.8981

February 27, 2020

The Honorable Matthew Z. Leopold
General Counsel
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 2310A
Washington, DC 20460

Re: *Nez Perce Tribe v. Midas Gold Corp., et al.*, Case No. 1:19-CV-00307-BLW (D. Idaho)

Dear Matt:

I am writing to advise you of the potential of third party discovery being directed at the U.S. Environmental Protection Agency ("EPA") in the above-captioned matter.

My clients are the Defendants in this case, which involves alleged violations of the Clean Water Act at the Stibnite Mine Site in Valley County, Idaho, where Defendants hold patented and unpatented mining claims, including on U.S. Forest Service lands. The court has now entered a scheduling order, pursuant to which fact discovery must be completed by October 6, 2020, and the deadline to join any additional parties is August 11, 2020.

EPA has had extensive involvement at this Site, including as it relates to past environmental clean ups of portions of the Site. As a result, EPA may have information relevant to the defense of the claims asserted in this case. Potential discovery may involve document request, interviews, and deposition testimony.

No present decision has been made by my clients to proceed with third party discovery from your Agency. Nonetheless, I am interested in developing an immediate point of contact at EPA to discuss any preferred or best practices that the Agency would appreciate our following in the event we do seek discovery. Given the looming litigation deadlines, we wanted to communicate with you as soon as practicable now that the court has entered the scheduling order.

Vinson & Elkins LLP Attorneys at Law
Austin Beijing Dallas Dubai Hong Kong Houston London
New York Richmond Riyadh San Francisco Tokyo Washington

2200 Pennsylvania Avenue NW, Suite 500 West
Washington, DC 20037-1701
Tel +1.202.639.6500 Fax +1.202.639.6604 velaw.com

ED_004715A_00030860-00001

Thank you for your assistance, and please advise if I can provide you with any additional information on this case.

Sincerely,



Ronald J. Tenpas

cc: David Fotouhi, Principal Deputy General Counsel
Elizabeth McKenna – VIA EMAIL (McKenna.Elizabeth@EPA.gov)

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 2/28/2020 2:07:49 PM
To: Tenpas, Ron [rtenpas@velaw.com]
CC: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Notice of potential discovery related to Stibnite project

Thank you, Ron. I appreciate you sharing the letter with me.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016



From: Tenpas, Ron <rtenpas@velaw.com>
Sent: Friday, February 28, 2020 5:32 AM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Bradley M. Marten <bmarten@martenlaw.com>
Subject: Notice of potential discovery related to Stibnite project

Elizabeth,

We wanted you to be aware of the attached letter sent to the EPA General Counsel's office related to the potential need for third party discovery directed at EPA in the Clean Water Act action that Midas is facing. I understand you and Brad have had some productive conversations recently related to a draft AOC Midas prepared. Obviously completing that AOC could have a bearing on the viability of the Nez Perce Tribe's Clean Water action during the period that an RI/FS is being performed. Thus, while we remain hopeful that the lawsuit and the Tribe's concerns will be resolved through this alternative statutory mechanism that Congress established in Section 113(h), we are having to plan for the contingency that the CWA litigation will become very active. With respect to relevant information in the possession of the United States, we'd like to proceed in the most courteous way possible. Hence this advance notice to the Agency as we begin to turn to the discovery process in the Nez Perce suit.

I'm happy to discuss this further with you if it would be helpful.

Regards,

Ron Tenpas

Ronald J. Tenpas
Partner

Vinson&Elkins

E rtenpas@velaw.com
W +1.202.639.6791

Vinson & Elkins LLP
2200 Pennsylvania Avenue NW
Suite 500 West

Washington, DC 20037

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Thank You.

Message

From: Wright, Peter [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=11616A3DB06F4ECEB13EA26C7E6DC1F0-WRIGHT, PET]
Sent: 6/3/2020 11:27:49 PM
To: Tenpas, Ron [rtenpas@velaw.com]
CC: Bodine, Susan [bodine.susan@epa.gov]; Cook, Steven [cook.steven@epa.gov]
Subject: RE: Midas Gold

Ron

Let me check with Susan about her availability over the next couple of days. I also want to include my Deputy Steven Cook who has been working on this matter.

Peter

From: Tenpas, Ron <rtenpas@velaw.com>
Sent: Wednesday, June 3, 2020 11:02 AM
To: Wright, Peter <wright.peter@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Midas Gold

Peter,

I wanted to follow-up on the below and see if there would be a chance to talk. I'm in all of this week but I'm hoping to be out next Monday/Tuesday (although I'd hope to have some open time Monday a.m.). We're also mindful that there is a limited work season in Idaho so if we are going to have any hope of moving forward on early actions under an agreed AOC during this work season we need to get to a resolution pretty quickly. Failing to do so could mean effectively losing a year on that front.

I'm sure you are juggling many balls right now but any attention you and Susan can give to this would be appreciated.

Regards,

Ron

From: Wright, Peter <wright.peter@epa.gov>
Sent: Friday, May 29, 2020 2:50 PM
To: Tenpas, Ron <rtenpas@velaw.com>
Cc: Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Midas Gold

[EXTERNAL]

Ron

We are working on this matter. I will see if we can set up a call next week.

Peter

From: Tenpas, Ron <rtenpas@velaw.com>
Sent: Monday, May 25, 2020 4:27 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Wright, Peter <wright.peter@epa.gov>
Subject: Midas Gold

Susan/Peter,

I understand based on an e-mail last week from Chris Hladick back to Midas CEO Laurel Sayer that there are consultations going on between your offices and Region 10 on the Midas Gold negotiations.

We transmitted a specific AOC RI/FS proposal to the Region, based on the model AOC, on May 12. As we have understood things, because we worked from the model, there should really be only a handful of significant "policy/major point" issues that are key here, such as the specific early actions, clearly identifying the scope of a simultaneous RI/FS, and a couple of other items. We'd like a chance to speak with you to run down what we understand the key issues are, to summarize what we have proposed, and why we think our proposal is reasonable for the Agency so you have heard from us directly as you are evaluating our proposal. We could get through this discussion, I'm sure, in less than 30 minutes. The point would be to focus on the substance of our May 12 proposal and why we think it makes sense to move this forward, and not rehash the negotiating history, which is now water under the bridge. We have made a similar offer to provide a briefing to the Region but have not heard back on that.

Would it be possible to get a short call of this sort with you?

Ronald J. Tenpas
Partner

Vinson & Elkins

E rtenpas@velaw.com
W +1.202.639.6791

Vinson & Elkins LLP
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037

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Thank You.

Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 5/3/2019 1:13:37 PM
To: jcruden@bdlaw.com
CC: L. Michael Bogert [mbogert@midasgoldinc.com]; Bradley M. Marten [bmarten@martenlaw.com]; Laurel Sayer [lsayer@midasgoldinc.com]; Bilbrey, Sheryl [Bilbrey.Sheryl@epa.gov]
Subject: FW: Power Point Presentation for Today's Meeting

Hi John. Forwarding you the message I just sent to Michael. I mistyped your email the first time.

- Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: McKenna, Elizabeth
Sent: Friday, May 03, 2019 6:10 AM
To: L. Michael Bogert <mbogert@midasgoldinc.com>
Cc: Bilbrey, Sheryl <bilbrey.sheryl@epa.gov>; jcruden@bdl.com; Bradley M. Marten <bmarten@martenlaw.com>; Laurel Sayer <lsayer@midasgoldinc.com>
Subject: Power Point Presentation for Today's Meeting

Hello, Michael. Sheryl Bilbrey and I will be calling into the meeting this morning. If you are using a power point presentation during the meeting, could you please email it to Sheryl and me so that we can follow the discussion more effectively? Thanks very much.

Regards,

Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

Message

From: Tenpas, Ron [rtenpas@velaw.com]
Sent: 2/27/2019 8:06:39 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: RE: Is there a chance we can schedule a time to talk, e.g. for me to call you?

3:30 today is fine. I'll call you then. Thanks.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Wednesday, February 27, 2019 3:06 PM
To: Tenpas, Ron <rtenpas@velaw.com>
Subject: Re: Is there a chance we can schedule a time to talk, e.g. for me to call you?

[EXTERNAL]

Hi, Ron. Yes. Are you available at 3:30 today? Alternatively, Friday between noon-1:30 pm currently works for me as well.

Sent from my iPhone

On Feb 27, 2019, at 3:04 PM, Tenpas, Ron <rtenpas@velaw.com> wrote:

Ronald J. Tenpas
Partner



E rtenpas@velaw.com
W +1.202.639.6791

Vinson & Elkins LLP
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037

[bio](#)

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Thank You.

Message

From: Tenpas, Ron [rtenpas@velaw.com]
Sent: 2/8/2019 8:07:11 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: RE: Phone messages

David,

Have you had any further discussions about an in-person meeting?

Ron

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Sunday, January 27, 2019 10:28 AM
To: Tenpas, Ron <rtenpas@velaw.com>
Subject: Re: Phone messages

[EXTERNAL]

Ron:

Sorry for not being able to respond during the shutdown. I'll be in the office tomorrow. Would talking at 11am or 1pm work for you?

Best,

David

Sent from my iPhone

On Jan 25, 2019, at 10:00 AM, Tenpas, Ron <rtenpas@velaw.com> wrote:

David,

It may be that the furlough is impacting you but would you have a chance to talk briefly (less than five minutes) in the next couple of days?

Regards,

Ron Tenpas

Ronald J. Tenpas
Partner



E rtenpas@velaw.com
W +1.202.639.6791

Vinson & Elkins LLP
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Thank You.

Message

From: Tenpas, Ron [rtenpas@velaw.com]
Sent: 1/28/2019 3:10:25 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: RE: Phone messages

David,

Welcome back. I'm sure you've got a lot built up. I could talk at either time if they both still work. I'll try and call you at 11:00 as a starter unless you prefer another time.

Ron

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Sunday, January 27, 2019 10:28 AM
To: Tenpas, Ron <rtenpas@velaw.com>
Subject: Re: Phone messages

[EXTERNAL]

Ron:

Sorry for not being able to respond during the shutdown. I'll be in the office tomorrow. Would talking at 11am or 1pm work for you?

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David

Sent from my iPhone

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David,

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Regards,

Ron Tenpas

Ronald J. Tenpas
Partner



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Suite 500 West
Washington, DC 20037

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Thank You.

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 2/27/2019 8:06:07 PM
To: Tenpas, Ron [rtenpas@velaw.com]
Subject: Re: Is there a chance we can schedule a time to talk, e.g. for me to call you?

Hi, Ron. Yes. Are you available at 3:30 today? Alternatively, Friday between noon-1:30 pm currently works for me as well.

Sent from my iPhone

On Feb 27, 2019, at 3:04 PM, Tenpas, Ron <rtenpas@velaw.com> wrote:

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Washington, DC 20037

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Thank You.

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 4/11/2019 6:53:43 PM
To: Tenpas, Ron [rtenpas@velaw.com]
Subject: RE: Missed call

Yes, that will work.

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Tenpas, Ron <rtenpas@velaw.com>
Sent: Thursday, April 11, 2019 1:33 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: Missed call

David,

Can I call you around 5:30? Thanks for the follow up.

Ron
Sent with BlackBerry Work
(www.blackberry.com)

From: Fotouhi, David <Fotouhi.David@epa.gov>
Date: Thursday, Apr 11, 2019, 1:31 PM
To: Tenpas, Ron <rtenpas@velaw.com>
Subject: Missed call

[EXTERNAL]

Ron:

Do you have a few minutes to talk this afternoon? I'm available between 3:00-4:00pm or after 5:30pm.

Best,

David

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976

fotouhi.david@epa.gov

Ronald J. Tenpas

Partner



E rtenas@velaw.com

W +1.202.639.6791

Vinson & Elkins LLP
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037

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Thank You.

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